



**Food and Agriculture  
Organization of the  
United Nations**

# **When the law is not enough**

**Paralegals and natural resources  
governance in Mozambique**



# When the law is not enough

## Paralegals and natural resources governance in Mozambique

by

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for the

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FAO Legal Office

Food and Agriculture Organization of the United Nations  
Rome, 2014

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ISBN 978-92-5-108248-5 (print)  
E-ISBN 978-92-5-108249-2 (PDF)  
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## FOREWORD

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The Development Law Branch of the Food and Agriculture Organization of the United Nations (FAO) seeks to support the rule of law in all of its work. It provides legislative advice to member countries of FAO in areas within its mandate, and seeks to do so in ways that strengthen governance, equality and opportunities for weaker actors, including women and the rural poor.

FAO has had a long relationship with Mozambique in this context, beginning with support to the progressive and widely acclaimed 1995 National Land Policy and 1997 Land Law, as well as new legislation for Forestry and Wildlife, and Territorial Planning. Throughout this process FAO has promoted the use of a participatory approach which has given the new laws a strong sense of legitimacy and relevance. FAO (the Development Law Branch and other technical units) then moved on to supporting the implementation of the new legal framework, again using participatory methods and working with a wide network of government and civil society partners.

Mozambique's land law provides statutory recognition of customary land rights and is considered one of the most progressive legislations in Africa. However, the law has suffered and continues to suffer from a number of implementation challenges, and indeed FAO is well aware that simply having a new law is not enough to bring about transformative change in a country. FAO therefore built up a programme to support implementation through capacity development targeted at various groups who are either direct beneficiaries of the legislation, or responsible for implementing it. This capacity development work spans at least 12 years now, and throughout has been strongly supported by the Netherlands, and more recently by Norway. Initially FAO worked with a national partner, the Centre for Juridical and Judicial Training (CFJJ) of the Mozambican Ministry of Justice to integrate the new land and natural resources law, as well as new environmental legislation into training for judges and lawyers. It then supported the development of a new capacity development and

legal empowerment programme at the CFJJ that uses what it calls the ‘twin-track approach’ to legally empower local communities on the one side, and local government and development agency officers on the other. The empowerment process has centred on training for non-governmental organization (NGO)-sponsored paralegals who then work amongst local rights holders, individuals and communities, while a range of local, district level and national government officials have been trained in concepts of fundamental rights and the use of the new laws to promote participatory territorial development, as duty bearers.

While the paralegals also support communities facing land and resource conflicts (mostly with new private sector investors seeking to access and use their land), the main focus of the training is to further understanding of how to use the national laws for more equitable development. This starts with recognizing the rights of local communities, before moving on to discussing how to use the various legal and practical instruments to promote investment in a way that does not exclude communities and can in fact create new opportunities for diversifying livelihoods strategies and enhancing their incomes. The role of government agencies should be to facilitate interactions and act as a referee, ensuring that relevant legal requirements are fully respected and governance improved. Throughout this innovative programme, special attention has been paid to women’s rights to natural resources, amongst the communities and their largely male leaderships as well as with rural women themselves, and in the training given to the government officers.

This publication presents a complete overview of how this programme developed and what it has achieved to date. It highlights the lessons learned from this core element of the FAO’s long history of support to the land programme in Mozambique. In particular, it focuses on how paralegals at local levels can empower local people to know and be able to protect their rights, and perhaps more important, to then use them constructively to support their own development. It also compares the roles of paralegals in different countries, drawing on both western and African experiences, and puts forward a definition of a paralegal working at the community level.

Looking at empowerment in the wider social and institutional context that often limits rights and fosters injustice, the study also shows how the use of the innovative ‘twin-track’ methodology can overcome a series of institutional and capacity constraints within the context of what it calls ‘the empowerment chain’, and promote a more participatory and inclusive form of development.

The authors of this publication are Christopher Tanner and Marianna Bicchieri, who served as Chief Technical Advisors of the Mozambique land programme and component projects between 2005 and 2014. The publication was at the initiative and under the supervision of Margret Vidar, Legal Officer in the Development Law Branch and Lead Technical Officer for the land programme in Mozambique since 2009. Comments and suggestions were gratefully received from Paolo Groppo, Territorial Officer, Land and Water Division, who has backstopped the programme since its early days, Alison Rende, consultant in the Legal and Ethics Office and Rachael Knight, Program Director of Namati’s Community Land Protection, to whom the Development Law Branch wishes to express also its deep appreciation.

We also wish to thank the Embassies of the Netherlands and Norway for the financial support to the land programme in Mozambique.

Blaise Kuemlangan  
Chief  
Development Law Service



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## ACRONYMS AND ABBREVIATIONS

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AMUDEIA	Associação das Mulheres Desfavorecidas na Indústria Açucareira
CFJJ	Centre for Juridical and Judicial Training, Ministry of Justice (Mozambique)
CBO	Community-based organization
CEPAGRI	Centre for Promoting Agricultural Investment
CPI	Investment Promotion Centre
CSO	Civil Society Organization
CTV	Centro Terra Viva
DNPDR	Direcção Nacional para a Promoção de Desenvolvimento Rural (National Directorate for Promoting Rural Development)
DUAT	Direito de Uso e Aproveitamento de Terra (Land Use and Benefit Right)
FAO	Food and Agriculture Organization of the United Nations
FCT	Forum de Consulta sobre as Terras (Consultative Forum on Land)
IDLO	International Development Law Organization
IPAJ	Institute for Promoting Access to Justice
iTC	Community Land Initiative
LAC	Legal Assistance Centre (Namibia)
LDH	Liga Mocambicana dos Direitos Humanos (League for Human Rights)
LRIC	Land Rights Information Centre
LSA	Large scale [land] acquisition
MAE	Finance and State Administration
MITUR	Ministry of Tourism (Mozambique)
MPD	Ministry of Planning and Development
NADCAO	National Alliance for the Development of Community Advice Officers
NFHR	National Forum for Human Rights (Sierra Leone)
NGO	Non-governmental organization

NLP	National Land Policy (Mozambique)
NPA	Namibian Paralegal Association
ORAM	Organização Rural para Ajuda Mútua (Organization for Rural Mutual Assistance - Mozambique)
RDS	Rural Development Strategy (Mozambique)
UNAC	National Union of Peasants (Mozambique)
UNDP	United Nations Development Programme
ULA	Uganda Land Alliance
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

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# 1. Introduction

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In December 2013 a conference took place in Maputo, the capital of Mozambique, attended by some 80 paralegals from different parts of the country. Around half were women. Everyone spoke enthusiastically about their work in rural communities, raising awareness of local rights over land, including women's rights. They also discussed how the laws of Mozambique recognize and protect these rights, and provide for an equitable and inclusive form of development which respects the right of local people to participate in and gain from the developments taking place around them.

There were also many stories of the law being blatantly disregarded, by investors wanting land, and by government officials conniving with them to facilitate the enclosure of community managed resources. Happily these stories were balanced by more positive accounts – local governments asking paralegals to help with land disputes, cases against unscrupulous investors being won in court, and male leaders changing their views about women being able to hold land in their own names.

Most of the paralegals at the conference were trained specifically in land and related natural resources laws; and this training is most likely to have taken place in short courses developed by the Centre for Juridical and Judicial Training (CFJJ) of the Mozambican Ministry of Justice, with technical assistance from FAO. The partnership between FAO and the CFJJ began several years earlier with a project to train Mozambican judges and public prosecutors in land, environmental and natural resources legislation developed in the late 1990s. Research carried out during this project revealed the need to provide similar training for local government officers in charge of managing economic and social development at district level and below. And more importantly perhaps, it was clear that some form of legal education was needed at local community level, so that local people could make full use of their legal rights.

It is already clear from what has been said above that the work of the CFJJ-FAO paralegals is about more than injustice and resolving conflicts. Using rights, not just defending them, has always been an equally if not more important objective of the paralegal training. This training was also complemented by local government capacity development, so that officials might respond more effectively to abuses of local rights, and could include local communities in the development planning and decision-making process.

The starting point has indeed always been a respect for existing rights. This leads on naturally to facilitating constructive engagement and negotiation between local people and outside interests. For this to work, all those involved must have at least a basic understanding of rights acquired under the law – including customary rights in the Land Law context – and are encouraged and guided to sit down and discuss the needs and aspirations of each side. Such a discussion must also include due attention to the role and rights of women, both as land users and as citizens with a right to take part in the decisions that affect their own and their families' livelihoods.

To achieve these objectives the CFJJ-FAO programme developed what came to be known as the 'twin track approach'. On one hand, this means empowering people to defend and exercise their rights, and to demand the right to participate as stakeholders in local development, including being able to say 'no' to investors whose projects will jeopardise livelihoods and disrupt their lives. On the other hand, it involves telling 'frontline' officials about fundamental constitutional principles of equality and respect for the law, and showing them how to use the instruments provided by new land and natural resources laws to promote a more inclusive and equitable form of development. The paralegal courses of the CFJJ are the first component of this approach. The second involves interactive seminars for technical staff working on rural development and land and natural resources issues at central and provincial level; and for district administration and justice officers who use and oversee the various laws in their day-to-day work.

Land and natural resources access is at the heart of the majority of local livelihoods and the bedrock of local food security for the Mozambican population, which is still mostly rural and with absolute poverty still over



fifty percent. The programme at the CFJJ is thus squarely within the remit of FAO, which is not often associated with justice sectors and legal training. The question of the rights of women is another key area of concern for FAO, not only because it is a fundamental human rights issue, but also because women are the main users of land in Mozambique and the principal workforce in agriculture. Up until now their rights are often secondary, acquired customarily through their relationships with men who retain ultimate control of the land they use. Yet the Mozambican constitution, and land and related legislation also give women full equality before the law and enable them to hold land in their own names. Recognizing and respecting these acquired rights will enhance their roles as economic actors who can engage with other stakeholders and participate in decisions over what happens to their land. This in turn will contribute to a range of other social and economic objectives, including the food security and social development of their children.

Meanwhile of course, other processes have been at work in Mozambique. With relative political stability and the consolidation of a new market economy have come pressures on land and a demand for resources from private investors, both national and international. Local rights have never been under greater threat, in spite of progressive land legislation passed in 1997 and strong constitutional guarantees of acquired rights, the equal rights of women, and the need to prioritise the well-being of all Mozambicans when it comes to social and economic policies and governance. Progressive new measures introduced by the 1997 Land Law and reinforced in more recent environmental, natural resources and even local government legislation, have faced constant opposition from entrenched interests. Their implementation has also been constrained by an institutional architecture for land management and administration that has been equally entrenched in its approach and slow to respond to the new policy challenges. Thus the 1997 Land Law has not achieved its full potential in terms of community development and poverty alleviation, and local communities up and down the country face losing their land or at least enough of it to fatally weaken their livelihoods and food security.

There is also ample evidence that not only investors but also Government agencies have been abusing or setting aside the law, in the pursuit

of growth and ‘the national interest’. This is why it is so important to include capacity-building for ‘frontline’ public servants working at local level, in any ‘empowerment’ programme. By changing the hearts and minds of these key officers, and showing them how to use the new legal instruments to assist all stakeholders – communities as well as investors – implementation of the policy and legal framework will be more effective.

This approach closely reflects that now laid out in the FAO ‘Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) (FAO, 2012[a]). In fact the process of developing the VGGT benefitted considerably from field-based lesson learning from the Mozambican programme, which preceded them by several years. It starts with a people-centred approach, which in turn requires that local rights over land and natural resources are recognized and respected in any land management and land administration programme. The CFJJ-FAO partnership has always been guided by this principle. The paralegal and local government training programme which is the subject of this paper therefore set out to show people (and especially the most vulnerable) how to defend and use their rights, and demonstrate clearly and objectively to local government officers that they can achieve all their social and economic targets by working with communities instead of against them. Thus, the ‘responsible governance of land and natural resources’ is essentially a partnership between communities, investors and Government working together in pursuit of commonly agreed objectives.

Nearly eight years after the CFJJ-FAO programme began, Mozambique has a vibrant, national paralegal movement and a growing number of local government and NGO officers who are aware of how to follow a more inclusive and negotiated path. This paper examines the training programme which gave rise to this movement, and considers how the twin-track approach can contribute to an equitable and sustainable model of development. It also offers a holistic vision of how ‘good governance of land and natural resources’ fits within a wider view of ‘good governance’ and a respect for the rights of all citizens, men, women, the rich and poor, the young and less able to fend for themselves.

The paper begins by looking at the challenge facing 'land and natural resources paralegals' in Mozambique today. This is essentially a story of surging demand for land, often backed by government, resulting in a *de facto* enclosure process, especially of the best land. But is also a story of imbalances of power within local communities, and between them and other stakeholders. The rights of women over land are especially vulnerable in this context, with 'gender issues' are rarely given more than token attention when a few women are consulted or where data are disaggregated by sex.

The paper then looks in more detail at what a paralegal is in practice. Chapter Three looks at 'paralegalism' in very different countries and contexts, including the emergence of the more specialized paralegal who focuses mostly on land and natural resources issues. The discussion is not just about paralegals as providers of justice services, but rather their role as 'agents for change' – as community educators, as advisors who give practical support to communities, and as a kind of mediator between local people and other social and political actors.

Chapter Four refers specifically to the CFJJ-FAO programme. It begins with a brief account of FAO involvement in land and natural resources in Mozambique, which underlines how important it is to have a long-term vision of land and governance issues. In this context much of what has been achieved by the programme is seen as a further step along a long road towards real empowerment and a just, inclusive form of development. The chapter ends with an analysis of the impact of the programme.

Chapter Five draws together the lessons learned from the programme regarding 'paralegalism', and then discusses the programme within the wider context of legal empowerment and social accountability. The role of the paralegal not only as conflict resolver but also as an agent for change is key; this is additionally reinforced by the 'twin-track' element of capacity-development and rights-based training for local government and sectoral officials developing and implementing public planning and investment programmes. It is apparent that neither 'the law' nor 'the paralegal' are enough on their own.

What we learn from the CFJJ-FAO experience is that consistent ‘civic education’ and legal support are needed if real empowerment is to take root, but that this may not be enough for local people to successfully exercise their rights and bring about change. In complex and difficult-to-reform institutional landscapes, ways must be found to change the attitudes of those who implement the laws on a day-to-day basis, local politicians and administrators. A basket of measures – an ‘empowerment chain’ – is needed to break down the institutional and cultural barriers and attitudes that block implementation, and allow an important and progressive land law to reach its full potential.

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## 2. The land and natural resources challenge

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Mozambique is a country blessed with abundant natural resources and a wonderful coastline, a magnet for all kinds of investor and speculator. The people with historical rights over these assets have endured decades of poverty, civil war, and recurring natural disasters. They know how to farm and use their land, and could use much more of it if they could get credit and good technical and marketing support.

To secure their rights over their land and its natural resources, the country went through an exemplary participatory policy and legislative process to establish a new National Land Policy and land law in the mid-1990s (FAO, 2002). Some consider the 1997 Land Law one of the best and most progressive in Africa (McAuslan, 2013). While land is constitutionally owned by the State and cannot be bought, sold or mortgaged, the State through its agents allocates 'land use and benefit rights', or *direito de uso e aproveitamento de terra* (DUAT)<sup>1</sup>, to all those who want to use it. A DUAT is a strong, exclusive private right that is not easily revoked, and can be inherited. Rooted in the constitutional principle that all acquired DUATs must be respected when new ones are allocated, the Land Law gives clear legal recognition of the rights over land occupied on an historical and customary basis – in other words by most rural Mozambicans – as being equivalent to DUATs. It then goes on to provide effective legal safeguards against the seizure of these DUATs without due regard for local rights.

Nevertheless, Mozambique is often cited when land-grabbing by international investors is discussed.<sup>2</sup> Since the Civil War ended in 1992, the country has embraced multiparty politics and a market economy, attracting a growing wave of investors and generating high rates of economic growth.

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1 English translation is 'land use and benefit right'.

2 The recent Oakland report (2011) suggests that some of these fears may be exaggerated but nonetheless large areas are still being given to investors by the government, fuelling this kind of concern.

Growth in agriculture has slowed since the early post-war surge, but post-war political stability is fuelling a new wave of investment in coal, oil and gas that is driving growth of around 7-9 percent per year. Demand for land by national and international entrepreneurs looking for opportunities in agriculture, agro-forestry, biofuels and eco-tourism is also rising, especially in and around new investment corridors and 'accelerated development zones' (FIAN, 2010; Oakland, 2011). Compared with the late 1990s, local rights are under much greater pressure as the government fast-tracks investment into rural areas.

The 1997 Land Law was designed to prevent the land grabbing that happens when a young and vibrant economy with weak institutions and powerful elites begins to grow rapidly. In fact it achieved some success in its first 10 or so years. It certainly raised awareness of local rights, and investors do go through the formal steps of consulting with communities to get a new land right. Communities also began to delimit and register their rights, with official figures indicating that from 1999 to 2013, 550 have been delimited and certified covering a total land area of just under 7.8 million hectares.

Success must be tempered with caution however. Nearly all delimitations have been supported by NGOs with bilateral funding while state land administration services respond mainly to the needs of private investors looking for land (CTC Consulting, 2003). The number of delimitations is also a small percentage of the land held by communities under customarily-acquired DUATs, with delimited communities appearing as tiny islands in a country with a total agricultural land area of some 494 000 square kilometres.<sup>3</sup> And when new DUATs are allocated to investors, a lot of consultations have a merely cosmetic character, giving the impression of local people agreeing to what is in fact a classic enclosure process (Tanner and Baleira, 2006; Tanner, 2010).

Meanwhile, although the 1997 Land Law established that local land rights can extend over large areas including used and unused resources, the reality is that most communities are unable to make more productive use

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3 World Bank, World Development Indicators, 2012 figure.

of the land they occupy. Very few local people can use their legal rights to raise finance, and even after a decade or more of massive donor funding for the public agricultural sector, access to effective extension and marketing support is woefully inadequate.<sup>4</sup> Much of the land that is legally occupied by communities and managed by them appears to be unused. Government is increasingly concerned about this and is keen to find ways to make such 'free land' available to national and international entrepreneurs.

One of the vehicles for doing this is a zoning programme that identifies land which is actively used by communities, leaving significantly large 'unused' areas which the State – as 'owner' – can then allocate to investors (Oakland, 2011). These investors are not always foreign corporations either. The government Strategic Programme for Developing the Agricultural Sector has in fact shifted focus from large foreign investment to 'domestic investment and the development of small and medium commercial farmers'. Some influential figures talk of some 800 000 family farmers with larger holdings and a more dynamic outlook – a kind of 'middle peasant' to use the old Chinese term – as the motor for a new approach to agricultural development. This suggests that the focus of any titling campaign should be giving individual DUAT Titles to this group of farmers.<sup>5</sup>

Large scale projects needing lots of land are however still an important part of government thinking. The official line is that there is plenty of land available, and while international capital should focus on agro-processing and marketing (ibid:13), large agro-forestry projects are still being approved. At a recent international conference, the Minister of Agriculture said that some 32 million hectares are available for new investment.<sup>6</sup> Grand schemes are underway, such as the 'Programme of Triangular Cooperation for Developing Agriculture in the Tropical Savannahs of Mozambique (ProSavana)', 'a long term project to transform 'subsistence and commercial agriculture' along the Nacala Corridor in northern

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4 The PROAGRI sector-wide programme ran over ten years in two phases, to carry out a root-and-branch institutional reform and decentralise services and support for farmers. This has not happened and several cooperation partners have withdrawn to revert to classical forms of direct project support.

5 Personal communications, João Carilho, Coordinator of the Millennium Challenge Account Land Component until it ended in 2013, and ex-Vice Minister of Agriculture.

6 This allows for some 3.6 million hectares already being used. See <http://www.mozambiquehighcommission.org.uk/?s=10&id=526&new=ok&grupa=1>

Mozambique, with some USD 25 million already committed.<sup>7</sup> The plan is to grow soy and other commercial agriculture over some 6 million hectares, with the main benefit to local people being job creation – the government insists that 90 percent of those employed must be Mozambicans.<sup>8</sup> There are similar plans for the Beira Agricultural Growth Corridor and ‘accelerated development zones’ across the country.

More recently, largely in response to criticisms of land grabbing and the impact on local livelihoods (Box 1), the Government and its partners have been emphasising how projects like ProSavana will work with local farmers to include them in new value chains and market opportunities created by agro-processing and transport investments such as railways. The out-growing model is particularly referred to, allowing hundreds of small farmers to use their own land to supply input crops to processing factories. There have also been notable advances in legislation too, with a 2008 Council of Ministers Resolution requiring investors wanting more than 10 000 hectares to include in their proposals ‘the terms of partnership between the holders of the DUAT acquired by occupation on the land required by the investor’.<sup>9</sup>

The livelihoods impact of these various projects is the subject of some debate. Their opponents argue that the large-scale land acquisitions (LSAs) and out-growing schemes will undermine local food security, taking land out of food production and into non-food cash crops. Those in favour argue that the land is not being used to its full potential, and the new projects will generate employment and raise incomes, enhancing food security and alleviating rural poverty. The fact is that neither of these positions has been adequately backed up with empirical research and hard data (Tanner, 2013). There are question marks over the employment impact of LSAs. According to the Oakland report on land deals in Mozambique, ‘plantations of any sort, including forestry and sugar, tend to create one job for each 5 to 10 hectares, even taking into account processing jobs in

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7 The Assistant Director for Southern Africa of the Japanese development cooperation agency JICA. See <http://www.mozambiquehighcommission.org.uk/?s=10&id=526&new=ok&grupa=1>

8 *Folha de São Paulo*, 14 August 2011, “Moçambique oferece terra à soja brasileira”.

9 Council of Ministers Resolution N°70/2008 of 30 December, in Serra (2012:332).



related factories'. And most of these jobs are 'low wage agricultural jobs, with a minimum wage of [about USD 67] per month' (Oakland, 2011:46).

**BOX 1**

**A statement by the National Union of Peasants (UNAC)**

"Following a comprehensive analysis of ProSavana, we peasant farmers have concluded that:

ProSavana is a result of a top-down policy, which does not take into consideration the demands, dreams and basic concerns of peasants, particularly those within the Nacala Corridor;

We vehemently condemn any initiative which aims to resettle communities and expropriate the land of peasants to give way to mega farming projects for monocrop production (soybeans, sugar cane, cotton, etc.);

We condemn the arrival of masses of Brazilian farmers seeking to establish agribusinesses that will transform Mozambican peasant farmers into their employees and rural labourers;

We are extremely concerned that ProSavana requires millions of hectares of land along the Nacala Corridor, when the local reality shows that such vast areas of land are not available and are currently used by peasants practicing shifting cultivation.

Considering the way in which the ProSavana programme was drafted and the process for implementing it, we peasant farmers warn of the following expected impacts:

The appearance of landless communities in Mozambique, as a result of land expropriation and resettlement;

Frequent social upheaval along the Nacala Corridor, and beyond;

The impoverishment of rural communities and a reduction in the number of alternatives for survival;

An increase in corruption and conflicts of interest;

The pollution of water resources as a result of the excessive use of chemical pesticides and fertilisers, as well as soil degradation;

Ecological imbalances due to vast deforestation for agribusiness projects.

**BOX 1****A statement by the National Union of Peasants (UNAC)(cont.)**

If there is to be investment in the Nacala Corridor, or in Mozambique in general, we recommend and demand that these investments be made in developing peasant farming and the peasant economy, as a priority, which we, members of UNAC and members of Via Campesina, know is the only kind of farming capable of creating dignified and lasting livelihoods, of stemming rural exodus, and of producing high-quality foods in sufficient quantities for the entire Mozambican Nation, all of which will lead us towards the realization of Food Sovereignty”.

Nampula, October 11th, 2012

*Source: Land Grabbing for Agribusiness in Mozambique: UNAC statement on the ProSavana Programme, at <http://viacampesina.org>*

Yet this does not necessarily mean that the new projects should be opposed. The fact is that local people do lack capital and the skills to diversify, and land remains idle or under-used. New investment does bring opportunity. An alternative response is therefore to strengthen the negotiating power of the people whose land is to be used by new projects. They can then drive a harder bargain with those who want their land (Tanner, op cit). If the projects go ahead, they can get better pay and conditions; or they can agree to rent or lease their land for a fair price; or they could become partners with investors and share in future returns. Alternatively, local farmers may want to go it alone and use their land rights to access finance for their own projects. In all these cases they need good legal support, not only to inform them about their rights, but also to guide them in their dealings with state agencies promoting investment, with investors looking for land, and with banks and other services offering support.

## 2.1 Gender and women's land rights

The rights of women over the land they use is a central concern for FAO. In a recent conference in 2011 a series of guiding principles were laid out to enhance the security of these rights and thus enable women to play a full role in the development of their communities (Box 2).

**BOX 2**  
**Closing the gender gap in access to land**

At a conference in Rome on the role of women in agriculture, FAO laid out a series of measures that all countries should adopt to address the issue of women's rights over land and close the gap between the way their rights are treated compared with those of men:

**ELIMINATE DISCRIMINATION UNDER THE LAW:** Where statutory legal rights to land remain gender biased a key strategy is to review and reform all national legislation that relates to land and natural resources. Although land laws are the starting point, related legislation should also be considered.

**RECOGNIZE THE IMPORTANCE AND POWER OF CUSTOMARY LAND RIGHTS:** Legal rights are difficult to enforce if they are not seen as legitimate; thus recognizing customary land rights and working with community leaders is essential to ensure that women's rights are protected.

**EDUCATE OFFICIALS AND EVALUATE THEM ON GENDER TARGETS:** Local land officials may be unaware of gender equity laws and objectives or lack the mechanisms, tools and will to implement them. Gender-balanced employment in these institutions can also help.

**EDUCATE WOMEN REGARDING LAND RIGHTS:** Raising women's legal literacy, increasing the dissemination and accessibility of information and establishing supporting legal services are essential in promoting gender equity in land programmes.

**ENSURE THAT WOMEN'S VOICES ARE HEARD:** An important step towards helping women gain access to established rights is to have meaningful representation. Women's organizations can be effective in promoting local participation, building consensus and raising consciousness at all levels.

**GATHER SEX-DISAGGREGATED DATA FOR POLICY DESIGN AND MONITORING:** Gathering sex-disaggregated data can help improve the design and effectiveness of land-titling Programmes.

*Source: FAO, 2011(a), paragraphs 27-32.*

Gender issues in Mozambique are complex however. Although they are the main producers of food and manage both their households and their land, rural women are extremely vulnerable when it comes to real decision-making power and rights over land and resources.

Mozambique has several ethnic groups with different traditional practices and customary tenure arrangements. In general, these fall into two groups: matrilineal systems in the northern provinces, and patrilineal systems in the centre and south. Under matrilineal systems, land rights are allocated through the maternal line; under patrilineal systems, they are allocated through the paternal line. During recent years both systems have been changing due to migration flows and rapid urban concentration and growth. It is therefore difficult to talk today about pure kinship systems, with mixed matrilineal and patrilineal practices becoming the norm (Villanueva, 2011).

Nevertheless, in both systems it is still men who have the authority for allocating land rights and making decisions about land tenure (Seuane, 2009; Hatcher et al, 2005). In both systems women get access to land through some relationship with the men in their community – their fathers, husbands, uncles or brothers. In a normal household reproduction cycle, women use land and other natural resources allocated to them through these relationships, and while they are primarily responsible for using and caring for this land, they rarely have any right of ownership or secure tenure over it. When the men who hold the rights die, older women maintain use rights as their children inherit the land through the family lineage system. Assuming they are still able to farm, they can stay on their land if they want to.

Things are very different for younger women who get divorced or who lose their partners through illness or accident. Research carried out at the CFJJ (Seuane, 2007) suggests that when men die earlier and the usual household reproduction cycle is broken, the children are considered to be too young to claim any inherited rights. Members of the deceased person's extended family then set aside older customs that might have taken care of the distressed family, now headed by the young widow. Using other cultural norms to justify their actions, they lay claim to resources such as land, housing, money, household furniture, cattle, agricultural implements, even clothing, leaving the widow and children in even greater need (Save the Children, 2007). The children may be taken away from their mothers as well.

This is especially problematic with many more premature deaths occurring due to HIV-AIDS. A pattern is already evident in other African countries (FAO, 2007[b]), exacerbated by the increasing pressure on land from private investment, population growth and climate change. In Mozambique as well, an increasing number of younger women are at serious risk of being dispossessed of their land, and their children disinherited and vulnerable to abuse and exploitation. Young evicted families are often unable even to go back to the woman's family home, if there is no land for her to farm there either. As a result, they often end up as landless poor, migrating to urban and peri-urban areas and forced to take up high risk activities like prostitution and other exploitative work in order to survive (Seuane, op cit).

There are good gender equality policies and laws in Mozambique to combat these trends. The Constitution (2004) is very strong on women's rights, and Mozambique has acceded to the main international conventions on gender equality. The Land Law also guarantees the rights of women over land and ensures that customary law takes second place to constitutional principles. However, even with good laws it is often difficult to change deeply entrenched practices in both rural and urban areas. Mozambique is a strongly patriarchal society, so even where 'custom' is not the main problem, conservative attitudes and the imbalance of power between men and women override progressive laws and a fine Constitution. In rural areas, and especially in the remoter areas where the presence of the State is also weak, customary norms regulate all areas of life and it is difficult to spread legal information to a population with high illiteracy rates, particularly among women.

## **2.2 The legal and policy framework for land and resources**

A strategic vision recognizing local land rights as the basis of a more inclusive development model is at the heart of the Mozambican land and natural resources policy and legal framework.

This is captured in the ‘declaration’ of the 1995 National Land Policy (NLP), still in force today:

“to secure the rights of the Mozambican people over land and other natural resources, as well as promoting investment and the sustainable and equitable use of these resources”

(NLP, in Serra, 2012:29)

Seven ‘fundamental principles’ give greater shape to this concise blueprint for an equitable, rights-based approach to land and natural resources management:

- maintain the constitutional principle that land is the property of the State;
- guarantee access to and use of land for the population as well as investors, in this context recognizing the customary rights of access and management of the lands of the resident rural population [thus] promoting social and economic justice in the countryside;
- guarantee the right of access to and use of land for women;
- promote private investment, national and foreign, without prejudice to resident populations and ensuring that there are benefits for them and for the national treasury;
- the active participation of nationals as partners in private enterprises;
- the definition and regulation of the basic orienting principles for the transfer of DUATs between citizens or national enterprises, as long as investments have been made on the land; and
- the sustainable use of natural resources to guarantee the quality of life for present and future generations.

(Paragraph 17, *ibid*:29)

The NLP also establishes the important principle that ‘any entity or other person will be obliged to negotiate with the local community’ and that ‘the local community can ‘enter into partnership in the investment [by that entity or person], sharing profits and benefits resulting from the investment’ (*ibid*:30). This provision is predicated on the community

having been duly registered both in the Cadastre, and in the *Conservatória do Registo Predial* – Land Registry in English.

The 1997 Land Law gives legal and practical form to these principles. It was developed through an exemplary participatory process involving a wide range of government and civil society actors (FAO, 2002), which culminated in a National Land Conference in 1996 to discuss the Bill before it went to the National Assembly. This process gave the new law a high degree of societal support and legitimacy, which it still enjoys today (Calengo et al, 2006). The overall package, with implementing regulations<sup>10</sup> in place by the end of 2000, was a significant breakthrough in the contentious areas of integrating customary and formal law in a single legal framework, and managing relations between local people and private investors eager to access and use their land. Some 15 years after its passage into law, it is still being referred to as ‘one of, if not the, most advanced land law on the African continent’ (McAuslan, 2013:74).

There are several key innovations in the 1997 Land Law which even today are questioned or even ignored by senior politicians and the interests they protect. The first is its legal recognition of land rights acquired through occupation, with two forms of occupation resulting in a right that is fully equivalent to the State-issued DUAT. These are defined in Article 12 of the Land Law:

- occupation by individuals and by local communities, according to customary norms and practices provided that these do not contravene the Constitution; and
- occupation by national individuals who, in good faith, use the land for at least ten years.

This provision is rooted in Article 111 of the Constitution where the ‘State recognizes and protects rights acquired by inheritance or occupation’. Nevertheless there are still many in government and the private sector

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10 Regulation of Land Law 19/1997: Decree N°22/1998 and Technical Annex of Land Law 19/1997: Ministerial Decision N°29 A/2000.

who do not fully accept the principal implication of this important step forwards – most if not all land in Mozambique has an ‘owner’, in the sense that it is occupied by someone who claims some kind of customary right over it. This notion has been at the centre of disputes over land and the focus of paralegal work for many years.

The second innovation in the Land Law is the ‘local community’, a legally defined entity incorporating family groups and villages linked by their shared use and management of resources and other kinship and economic ties. The local community collectively ‘seeks to safeguard common interests through the protection of residential areas, agricultural areas whether cultivated or in fallow, forests, sites of cultural importance, pasture, water sources, and areas for expansion’ (art. 1(1)). This entity occupies an area which is covered by a collectively-held and managed DUAT. Within its borders its members – individuals and households – get their rights through the prevailing ‘customary norms and practices’, and consequently these rights are also legally equivalent to and recognized as DUATs.

The ‘local community’ idea is however another area of contention when it comes to applying the law. The concept is poorly understood, and is often criticised for being vague and unclear. The concept is in fact the result of using systems theory to identify the boundaries of a given production system, including its social, technical and agro-ecological aspects. A line can then be drawn around this area – a process called ‘delimitation’ - and the resulting spatial unit is a ‘local community’ in Land Law terms.

The ‘local community’ is thus a simple idea with a firm basis in reality. But the land borders – and thus the area ‘occupied’ – conflict with how elite and political leaders see the countryside, as an area that is essentially free for the State to manage and allocate to whoever it chooses. The most contentious issue is how the systems-based analysis extends the concept of ‘occupation’ over much greater areas than those currently in use. Most rural production and survival strategies exploit different areas and resources at different times – besides visible plots and gardens, they include grazing, woodlands, and housing. They can also include quite large areas set aside as fallow or held in reserve for future generations. Recognizing this wider ‘occupation’ as having a DUAT over it is in fact the major advance of the



1997 law. Yet it is precisely these ‘unused’ areas that are often the focus of attention for both investors and the government. Finding it hard to accept the idea of a pre-existing DUAT, the state and its agents then treat this land as ‘free’ to re-allocate to investors.

The third innovation is the notion that the ‘local community’ participates in the management of land and natural resources, including using customary norms and practices (Article 24). This covers the allocating of land and resources internally to local households, defining the limits of the community, conflict resolution, and participating in the allocation of new DUATs to other, non-community land users. Once again this management role of the community – having the *de jure* authority to issue DUATs to its own people and have a say in how outsiders get them – is not always accepted by officials and others who see land as a state asset and therefore entirely state-managed.

The fourth innovation, and an integral part of community management, is the requirement that all investors must consult with local communities to see if the land they want is ‘free from occupation’. If it is not, the person requesting the land must negotiate the ‘terms governing the partnership between the [existing] title holders by occupation and the person requesting the land’ (Land Law Regulations, Article 27 (3), in Serra 2012:89). How this process takes place, and whether local people really do ‘participate’ or are merely manipulated in meetings with more powerful people, is also a critical area of debate. What is clear is that for consultations to be transparent and genuinely protective of local interests, some form of legal education and support for communities is essential.

A related and fifth innovation is that the DUAT (i.e. the land) of a local community is held and managed collectively by all of its members (Article 10), who are ‘co-titleholders’ with rights and obligations specified in the Mozambican Civil Code. Thus in any process involving community land – such as a consultation to decide if a certain area is ‘free from occupation’ – all community members must participate (for example, through community meetings with their leaders). This point is poorly understood and rarely applied in practice. Recent glaring examples of *consultas* being manipulated and signed by pliable leaders without wide

internal consultation include land concessions to the new oil and gas industry (Mario, 2013), but the failure to adequately include all community members is well documented over several years (FAO, 2004[b], 2006; Akesson et al, 2009).

The Land Law includes other important provisions such as guaranteeing 'just compensation' when rights are revoked in the public interest (Article 18). In practice this provision is extended to assessing 'compensation' when the community agrees to cede its acquired DUAT to an investor. This 'compensation' is a *de facto* payment for the land, but it is rarely enough to allow those who give up their rights to re-establish, let alone improve their livelihoods (FAO, 2006). With better information about their rights and how to negotiate with investors, communities and households should at least be able to get a much fairer compensation payment when they give up their land.

One area where the 1997 Land Law met civil society resistance was women's land rights. Before it was approved, women's organizations were concerned that the idea of recognizing customary 'norms and practices' as one way of getting the DUAT would work against rural women. These concerns were aired during the 1996 National Land Conference to discuss the Land Law Bill (*ante-projecto*), and a clause was added to Article 12(a) making the use of 'norms and practices' conditional upon their compliance with Constitutional principles. Indeed Article 4 of the Constitution itself, which recognizes 'the various normative systems...which coexist in Mozambique', subjects these systems to the same test.

Thus the rights of women over land are protected in various ways. Firstly, Article 36 of the Constitution establishes equality between men and women 'in all areas of political, economic, social and cultural life'. Secondly, Article 10 of the Land Law states unequivocally that men and women can be holders of the DUAT. Thirdly, where the DUAT is managed by customary norms and practices, these cannot undermine the basic rights of women enshrined in the Constitution. Fourthly, the co-title principles governing the internal management of a community-held DUAT ensure that women must be included as co-title holders when decisions are made about the collectively-held DUAT and the land it covers.

These are strong safeguards of women's rights over land, which are vulnerable both in the customary context and in the strongly patriarchal context of Mozambican society in general. Indeed women are now further protected by the provisions of important new legislation on domestic violence, succession and family matters. Nevertheless the reality is that few women know about the formal legal protection of their rights. More alarming still is clear evidence, in CFJJ seminars and elsewhere, that few senior public officers understand the strong legal and constitutional underpinning of women's rights before the law. Views about 'our culture' taking precedence are common, even amongst judges.<sup>11</sup> It is therefore not only essential that women know their legal rights, but that men too are made aware of these rights and the injustice that results from rigid adherence to customary and patriarchal 'norms and practices'.

Alongside the Land Law, new laws regulating forestry and wildlife, the environment, territorial planning, and other natural resources (fisheries, water etc.) have been implemented. All of these share some important common principles. Perhaps the most important is that the local community has acquired rights of access to and use of resources for subsistence and livelihoods needs. These rights are assumed and do not have to be requested. They are however conditioned by restrictions on endangered species, the use of certain hunting techniques, and so on, but the basic principle is clear: Mozambican citizens can use their own natural resources for their own needs.

All these laws also require a consultation between communities and investors who want to use natural resources in an area where there are people. Indeed the Forestry and Wildlife Law (N°10/1999) uses the same definition of 'local community' as the Land Law, implying that the resources within a delimited community are managed by that community in accordance with Article 24 of the Land Law.

The Government, acting in the name of the State as owner of all natural resources, must always approve the commercial use of natural resources, whether by local people or by investors. For most resources there is a

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11 Author notes from CFJJ seminars and training sessions, community meetings, etc.

distinction between a 'simple licence' and 'concession'. The former is supposedly more straightforward and aimed at communities who want to commercially exploit the resource (for charcoal sales for example), while the latter is aimed at outside commercial enterprises and requires a community consultation before being approved.

The Environment Law (N°20/1997) also establishes the need for public consultation in Environmental Impact Assessments, as well as the principle that citizens collectively or as individuals can take their grievances to court if their rights are prejudiced by the actions of third parties. This applies specifically to pollution and other impacts caused by a proposed or implemented project, but the principle once established applies to other contexts as well.

The Territorial Planning Law (N°19/2007) and regulations also stress local involvement in planning, with opportunities to link community delimitation and local land use planning to District Land Use Plans. Article 4 contains important principles for local land and resource rights, including '[in the] development, alteration or execution of territorial planning and management, the fundamental rights of citizens and relationships that are legally constituted are always respected' (CFJJ, 2010:68). Such 'legally constituted relationships' can of course include DUATs. This law also extends the concept of 'compensation' significantly, moving beyond basic interpretations of the Land Law that only cover material assets like standing crops and housing, to include non-material assets such as 'the loss of proximity to transport routes and means of transport' and 'damage to social cohesion' (access to cemeteries, resettlement, etc.) (ibid:70).

Various laws regulating new economic activities are also important for a community paralegal. For example the Tourism Law establishes 'tourism zones' within which existing rights are recognized, but are then subject to provisions about how land and resources in these zones can be used. Tourism operators must also 'respect the cultural symbols, traditions and cultural practices' of local people (ibid:74). The Investment Law (N°3/1993) is another key legislation which affects local people and the security of their land and resource rights. Several provisions in the law

have implications for the way investment projects should be designed (Box 3).

<b>BOX 3</b> <b>Requirements expected of a new investment project</b>
<ul style="list-style-type: none"><li>• Implant, rehabilitate, expand or modernize infrastructure (to support the development of the country);</li><li>• expand and improve national productive capacity or provide services which do this;</li><li>• contribute to the creation, multiplication, and development of enterprises and Mozambican entrepreneurial partners;</li><li>• create employment and raise the professional level of Mozambican workers;</li><li>• promote the technological development of enterprises;</li><li>• increase and diversify exports;</li><li>• provide services which generate foreign exchange;</li><li>• reduce or substitute for imports;</li><li>• contribute to the supply of the internal market and to satisfying the basic needs of the population; and</li><li>• contribute to the improvement of the balance of payments and the Public Treasury.</li></ul> <p><i>Source: CFJJ, 2010:77</i></p>

Given the linkages and relationships between these laws and the Land Law, it is essential that anyone working with them or trying to ensure that they are correctly implemented is able to understand how they work together to promote an equitable development process. An important advance in this regard, and especially where LSAs are concerned, is another recent addition to the land and investment legislation, namely Resolution 7/2008.

This Resolution of the Council of Ministers lists what investors must include in their project proposals when asking for areas greater than 10 000 hectares, including:

- the minutes of the community consultation meeting; and
  - the terms of the partnership between the holders of the DUAT [acquired] by occupation on the land intended for the investment.
- (CFJ), 2010:77)

The policy and legal framework for land and natural resources management in Mozambique constitutes a powerful set of instruments which, if properly used, could lead to a new form of development. This would be market-based and capital-driven, but social concerns and local involvement would also figure alongside investor profits and national development concerns. Most importantly, the rights of local people to participate as full stakeholders would be taken fully into account, instead of their 'participation' being seen purely in terms of being given low paid jobs by new entrepreneurs who now occupy their land.

### **2.3 The role of the paralegal**

The demand for land in Mozambique continues to grow, in a landscape of weak public land institutions, unequal power relations, and powerful people who do not accept the basic principles behind the 1997 Land Law. This mixture is inevitably bringing communities into conflict with investors and the State. The NLP foresaw this, which is why the 1997 law is the way it is – securing local customary land rights while offering mechanisms to minimize conflict through a more consensual and equitable form of land management. This recipe remains valid today, perhaps more so than ever.

Early efforts to inform people about their rights under the 1997 Land Law include the impressive Land Campaign of the late 1990s. The Land Campaign united 22 national NGOs and a host of community-based

organizations (CBOs) to disseminate several key messages to villages across the country:

- DUATs are acquired by customary and ‘good faith’ occupation, with the word of a citizen or a community being accepted as proof of occupation;
- investors have to do a community consultation to establish if the land they want is genuinely unoccupied, and to reach agreement over securing it if it is occupied;
- women have equal rights to men and can hold DUATs, either individually or collectively if they form associations;
- communities and local farmers can form partnerships with investors, sharing land and making agreements of mutual advantage to both sides;
- communities and individuals have the right to defend their rights, using mediation, consensus, petitions and social communication if possible, but using judicial recourse as well.

(from Negrão, 1999)<sup>12</sup>

In spite of these efforts, a 2005 CFJJ case study research into land and natural resources issues revealed that while most communities know something about the 1997 Land Law, this knowledge is superficial. It does not stretch to being able to use their rights or legal instruments to protect themselves against land grabbing; and they have little idea of how to negotiate with investors (FAO, 2004[b], 2006).<sup>13</sup>

A more proactive approach is to move away from just transmitting messages about rights, and show people how to use their rights to give them a voice as stakeholders in the development going on around them. In short, their rights as DUAT-holders can give them a place at the table where projects are designed, negotiated and implemented. And with

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12 Available on the Scottish land website <http://www.caledonia.org.uk/land/mozambiq.htm>; a summary is available at [http://www.mokoro.co.uk/files/13/file/lria/land\\_campaign\\_in\\_mozambique\\_negrao.pdf](http://www.mokoro.co.uk/files/13/file/lria/land_campaign_in_mozambique_negrao.pdf)

13 The CFJJ also holds an extensive database of case studies collected since 2006.

basic legal literacy and legal support on their side (for example, during the consultation process and subsequent negotiations), local communities and their members can shape the kind of development that takes place in their midst, and also lever significant economic and other benefits from the investment process.

Following the precedent of the 1999 Forest and Wildlife Law and Regulations, which allocate 20 percent of tax revenues from new projects to local communities, these benefits could include a share of public tax revenues from new agricultural projects as well. Even better however, communities could engage with investors and even become partners in new projects using their land. In this case they might retain control over their land, and share in profits and other benefits as projects are implemented.

This kind of relationship may appear innovative and utopian, but remember that the 1995 NLP was already saying that a community 'can enter into partnership in the [private] investment, sharing the profits and benefits resulting from it' (NLP, paragraph 25 in Serra, 2012:30). There are many documented examples of such partnerships working in other countries, and there are now important flagship examples in Mozambique as well (Cotula and Leonard, 2010; Tanner, 2012). A more equitable and socially just outcome for community-investor consultations is indeed possible.

However, going down a more participatory and equitable path requires everyone - communities and their members, local government officials, and investors - to understand how the policy and legislative package can be used to produce positive social, economic and environmental benefits for all concerned. Local people have to know about their rights, and have the confidence and courage to defend and use them. And while most investors will have lawyers and other experts to help them, it is equally clear that not many of them understand the intricacies of local custom and land rights, and find the idea of working with communities perplexing or even a disincentive.

There is a clear development role here for specially trained paralegals. As well as assisting with conflict cases, paralegals can be trained to



advise people about a more proactive use of their rights, and to tell them how to exercise their right to participate as citizens and stakeholders in local development plans. Paralegals can also act as mediators and brokers when communities and investors meet to discuss ceding or sharing local land for a new project. Their presence can help to secure consensual and beneficial agreements for both sides. This in turn can minimize and prevent conflict, and enhance and diversify local livelihoods through a constructive engagement with investors and the state.

Paralegals trained specifically in the Land Law and related legislation can tell local people about the strong rights they enjoy under the law. By providing civic education and legal support, paralegals can show community leaders and local households how to use their rights to negotiate over or even refuse new projects. This way they get a much better deal than just a few minimum wage jobs. It is a tough challenge though, when you are faced by powerful economic and government interests (Box 4). Whichever path is followed will require a lot of civic education and legal literacy work with local people, and then providing them with paralegal or other legal support as they deal with those who want their land.

Rural women in Mozambique are at an even greater disadvantage when the application of customary norms works against them and their children. Women paralegals with specific skills and knowledge can do a lot to inform women of their rights and how to exercise them. But once again the paralegal should work with other key actors as well. They can work with male leaders to make them more aware of the fundamental rights in the Constitution and the need to consider adapting customary norms to end the injustice and suffering caused when women lose their land.

The impact of paralegal support is of course tempered by how public agencies apply the law and deal with citizens and their rights. The 2005 research study by the CFJJ revealed how little local government officers knew about the Land Law and how to use it in practice. Many are still being asked by their superiors to facilitate private investment and support national programmes that are potentially prejudicial to local interests. Yet they also

have to respond to the needs of local communities and try to include them in local planning and administrative decisions. These ‘frontline’ officers are the ones most likely to gain from a clearer understanding of how to use the law to chart a course between these conflicting demands, one that allows investors and communities to live and work together. Paralegals can work to change local institutional attitudes, especially if supported by measures to improve the ‘legal literacy’ of frontline government staff and show them as well how to use the various laws in practice.

These ideas lay behind the provisions laid out in the 1995 NLP and 1997 Land Law, but today it is even more urgent to provide civic education and practical support for both local people and local government officers. High rates of economic growth and surging demand for land and resources are threatening local rights which may be legally recognized but are practically invisible and ignored by investors and those in government who back them. Many years of hard work by NGOs means that many communities are now more aware of their rights. In areas where NGOs have been active it is not so easy for an investor to walk in and offer local leaders a few token jobs and a health post as ‘compensation’ for ceding thousands of hectares at virtually no real cost. But national NGOs and communities are less powerful in relative terms than they were in the late 1990s. Other actors – notably the new national entrepreneurial class closely allied to the state – are proportionately far stronger. The NGO movement is also split between the socialist thinking of organizations like UNAC, and others that are more willing to embrace the idea of developing business partnerships with investors.

In fact Mozambique is once again at something of a crossroads in terms of land policy. In late 2010, the Government created the *Forum de Consulta sobre as Terras* (FCT) – Consultative Forum on Land in English – as a ‘platform for inclusive debate involving government and a range of stakeholders’ (Council of Ministers Decree 42/2010). The FCT has been reviewing current policy and has produced draft decrees on key issues such as community consultations and community-investor partnerships. The signs so far are that the new Forum is far less inclusive than it should be, yet decisions are being taken that affect local people who have little voice in what is being discussed (Tanner, 2013a).

Paralegals can play an important role in all these situations. They can inform communities and provide them with basic legal support; they can broker deals between communities and investors; and they can help local government officers to navigate their way between the conflicting demands of investors, higher level political masters, and local people. 'Land Law paralegals' facing constraints and implementation challenges at ground level can also feed empirical information back to the FCT and help to develop better policy responses. Paralegals also have a strong ally from an unexpected quarter. In response to charges that projects like ProSavana are giving away local land to foreigners and will ruin livelihoods, President Armando Guebuza himself is on record as telling a Council of Ministers meeting in 2011 that the law must be respected "even by those who, in contact with local authorities, attempt to give the impression that they are powerful, or are sent by powerful people, or have been given decision making power by higher authority".<sup>14</sup> Local people – with paralegals to educate them and support them – have a clear green light to stand up to those who use political and economic influence or circumvent the law to get land illegally.

Going down a more participatory and equitable path requires everyone – communities and their members, local government officials, and investors – to understand how the policy and legislative package can be used to produce positive social, economic and environmental benefits for all concerned. Local people have to know about their rights, and have the confidence and courage to defend and use them. And while most investors hire lawyers and other experts to help them, it is equally clear that not many of them understand the intricacies of local custom and land rights, and find the idea of working with communities perplexing or even a disincentive.

There is a clear development role here for specially trained paralegals. As well as assisting with conflict cases, paralegals can be trained to advise people about a more proactive use of their rights, and to tell them how to exercise their right to participate as citizens and stakeholders

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14 *Notícias*, "Conselho de Ministros alargado: PR não quer conflito de terra," Maputo, 23 August 2011, and Arsénio Henriques, "Guebuza manda recados para o ministro da Agricultura," *O País*, Maputo, 23 August 2011.

in local development plans. Paralegals can also act as mediators and brokers when communities and investors meet to discuss ceding or sharing local land for a new project. Their presence can help to secure consensual and beneficial agreements for both sides. This in turn can minimize and prevent conflict, and enhance and diversify local livelihoods through a constructive engagement with investors and the state.

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## 3. What is a paralegal?

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### 3.1 Paralegals in different contexts

The preceding discussion has made a basic case for using paralegals to support local communities and others whose land rights are threatened by new waves of agricultural and rural investment. These people are usually extremely weak in power terms relative to all the other actors involved, and badly need legal support. The essence of the CFJJ-FAO programme is that an appropriately trained paralegal can be an effective way of providing this support. It is important however to be clear about what a 'paralegal' is, before going on to look in detail at the CFJJ-FAO programme.

A general 'catch-all' definition of a paralegal is 'a person trained in legal matters, who performs routine tasks requiring some knowledge of the law and procedures'.<sup>15</sup> This simple definition could cover situations ranging from a person with a university degree working with a professional legal team in Washington DC, to a solitary village-level paralegal in Nampula Province, Mozambique, with basic education and working on his or her own. The truth is that there are many types of paralegal. Indeed, Vivek Maru of the international legal empowerment organization named Namati, has remarked that 'there is far too much paralegal work in the world to comprehensively characterize' (2006:465).

Context is an essential reference point against which to assess what a paralegal is and what he or she can do. In countries like the United States of America, Canada and the United Kingdom, most paralegals work in law firms carrying out research and routine tasks which do not justify the use of an expensive and busy lawyer. They also tend to be supervised by and accountable to a lawyer.

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15 <http://en.wikipedia.org/wiki/Paralegal#Overview>

To quote from the American Bar Association:

“A legal assistant or paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.”<sup>16</sup>

In Canada people can choose when to use a paralegal or a lawyer and paralegals can work directly with their clients, but professional legal supervision is not very far behind (Upper Canada, 2009). In the UK, paralegals do not substitute for lawyers, but are instead ‘important members of the legal team, playing key roles in the legal process...working closely with solicitors and barristers...from office to courtroom, from clients to conferences, from the law library to the negotiating table’.<sup>17</sup>

Things are very different in Africa. The last two decades have seen many paralegal programmes take fragile root, and then expand into many different countries. A comparative study of paralegals in the Southern African region (Francina, 2006) finds a wide variation in the numbers and profiles of paralegal in each country (Table 1), and suggests that they can be classified into three main types:

- those working in legal offices and perhaps in government departments providing legal support to lawyers and professional teams (high school graduates at least, university graduates and may even have a law degree);
- those working in NGOs or legal advice organizations or in a centre at local level with the support of lawyers higher up in their organization (with high school education, maybe degree level); and
- community-based paralegals who work in the villages and rural communities in which they live (basic education, perhaps some secondary education).

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16 American Bar Association, <http://www.americanbar.org/groups/paralegals.html>.

17 UK National Association of Licensed Paralegals, <http://www.nationalparalegals.co.uk>

<b>TABLE 1</b>	
<b>Paralegals in some southern African countries, 2005</b>	
<b>Country</b>	<b>No of paralegals</b>
Angola	24
Malawi	50
Mozambique	40
Namibia [1]	325
South Africa	3700
Zambia [1]	200
Zimbabwe	106

[1] 300 in Namibia and 150 in Zambia are ‘community-based volunteers’.

Source: Ndlovu, 2005:10.

The first is similar to the paralegal who works in an American or British law firm. The second and third categories are much more African, with a focus on providing basic primary level support to poor communities. These paralegals work at local level and often come from the communities they work in. professional legal support is often far away and they often work alone.

Seen from a community perspective, Maru provides a more qualified definition which is more appropriate to the context of most African programmes: ‘lay people with basic training in law and formal government who assist poor and otherwise disempowered communities to remedy breaches of fundamental rights and freedoms’ (2006:429). Even in this case however, different countries have different kinds of paralegal services. The following examples illustrate the diversity that exists and also some interesting common features.

### 3.1.1 South Africa

South Africa has the best organized and most comprehensive legal support system of any African country, with a public legal aid system and an organization for lawyers and jurists to provide *pro bono* services (De Azevedo et al, 2012). It also has great many paralegals compared with the five other countries covered by the survey referred to above. Of the 3 700 paralegals in South Africa, 60 percent or 2 200 were community based, and it is likely that the number is considerably higher today.

This relatively sophisticated and extensive movement grew out of the Apartheid struggle. Today paralegals in South Africa are still ‘a frontline provider of legal services to poor South Africans’ (Hill, 2008:5). The Legal Assistance Cluster provides a definition which is similar to those above, but includes additional tasks beyond helping to right wrongs. Thus a paralegal is a person who has:

‘either received rudimentary law training or has been trained in basic of rights, human rights, administrative matters, and constitutional and development problems. Paralegals are also trained to provide legal education and assist community organization’. (Legal Assistance Cluster pamphlet quoted in Hill, 2008; emphasis added)

This definition takes the work of the paralegal into a more proactive, legal empowerment area. Including development problems and assisting community organization implies that paralegals are not only expected to resolve justice issues, but to mobilise the community so that it can handle issues that affect its day-to-day life. This might include dealing with local government, utility suppliers and the like. Community level paralegals also work in advice centres and in directly in communities.

Several legal NGOs with paralegals work under the umbrella of the National Alliance for the Development of Community Advice Offices (NADCAO). This has enabled them to consolidate funding in the years after Apartheid, when donor support fell off considerably (De Azevedo et al, 2012). All South African paralegals go through a one-year training course, which



immediately distinguishes them from most other paralegals in the region where a far shorter and more basic training is the norm.

South Africa is also unusual because its Constitution requires professional lawyers to provide some free service each. Organizations like ProBono South Africa and Legal Aid South Africa, as well as university law clinics, provide a way for them to do this. The civil society and paralegal movement is now moving closer to these more professionally staffed organizations. A recent agreement will allow ProBono jurists to provide support for NADCAO paralegals, not only training but also taking over more complex cases. South African Legal Aid will also support and train Advice Offices (De Azevedo et al, 2012:78-83).

### **3.1.2 Uganda**

Uganda has a network of Land Rights Information Centres (LRICs) operated by the Uganda Land Alliance (ULA). The LRICs work with paralegals, but also include staff who are legally qualified. They offer services ranging from conflict resolution to the provision of information on land law, policies and the rights of rural communities. Innovative methodologies have been developed including theatre and debates at village level which 'involve participatory identification of particularly pressing issues through community-level discussions where people can talk about their day-to-day problems relating to land' (Aciro-Lakor, 2008:73).

LRIC paralegals are 'members of the community who are chosen for the job by their peers. After being trained in basic human rights, they work as volunteers with desk officers at the LRICs, helping out with conflict resolution and information and education initiatives. They play a crucial role in community outreach, and go on follow-up field visits to talk to members of the community about disputes filed at the Centre' (ibid, emphasis added).

The ULA is also does national and international advocacy work, drawing upon field material and mobilizing funding, training and professional support. This structure promotes a strong two-way flow of information and support which 'protects the rights of poorer groups' and provides

the ULA with field-based data about real land disputes ‘with significant constitutional and policy implications’. It uses this information to advocate for policy and legal change (ibid:73-74). The ULA therefore has a dual focus: to address injustice while also creating the conditions for better relations and pro-poor development.

### 3.1.3 Sierra Leone

The Timap for Justice paralegal programme provides basic legal support to the most disadvantaged in difficult post-conflict circumstances.<sup>18</sup> Its paralegals work at community level supported by professional lawyers based in its Freetown headquarters. Inspired to some extent by South African community paralegals, the programme began in 1996 with support from two organizations, one national – the National Forum for Human Rights (NFHR) – and the other international – the Open Society Justice Initiative.<sup>19</sup> It became an independent Sierra Leonean organization in 2005, adopting the name Timap which means ‘stand up’ in the local language Krio.

Timap ‘takes an experimental approach to its work’ (Maru, 2006:441), with paralegals coming from the communities they serve. All have secondary education and some have university degrees. The organization gives them a two-week intensive training in law, the workings of government and paralegal skills, with other inputs from the NFHR and international sponsors. They then continue to learn ‘on the job’ with training and supervision from Timap directors (ibid, 2006:427).

By 2009 Timap had 13 field offices staffed by 25 paralegals (Dale, 2009:1). In 2012 paralegals were formally recognized by an Act of Parliament (Legal Aid Act), at which point there were 76 working in 33 locations and in various civil society organizations, reaching 8 out of the 12 districts in the country and the capital Freetown (Sierra Media Express, 2012). To foster local accountability, they are overseen by ‘Community Oversight

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18 See Vivek Maru (2006;2012), a founder of Timap, for an excellent account of the organization and its work. Timap has also been reviewed by the World Bank ‘Justice for the Poor’ Programme (Dale, 2009).

19 <http://www.opensocietyfoundations.org/about/programs/open-society-justice-initiative/background>

Boards', which include community leaders, at least one woman, and one youth representative. All members are selected by the community and local chief. This is significant as the historical sketch of Sierra Leone and the case studies cited by Maru suggest that the power of the chiefs is often a factor in the injustice addressed by Timap.

The programme has a human rights focus and its paralegals are known as 'the human rights officers' by local people. But as well as human rights, they deal with whatever comes along. Their work can include domestic violence, child abandonment, corruption, economic exploitation, abuse by the police and traditional authority, and rights to employment, education, and health. Many cases begin with land disputes, but the concern of the paralegal is the specific injustice rather than land issues *per se*.

Timap paralegals are trained in mediation, which is their principal tool. Others include advocacy, education, organizing and litigation. They are flexible and adaptive, able to respond to diverse and challenging situations. Litigation is sparingly used, held in reserve as a kind of ultimate threat. Even where courts are far away and mistrusted, and the 'rule of law' is often and easily set aside, the parties in Timap cases are 'in awe' of the law, and the 'colour of the law' (referring to the 'human rights' ID cards used by Timap paralegals) 'causes many Sierra Leoneans to treat our office with respect' (Maru, 2006:451).

Maru also comments on the causes of injustice and the context of paralegal work. He observes that 'the 'barren' institutional landscape' of Sierra Leone, with inaccessible or corrupt public services...causes and sustains the widespread and deep injustice that Timap paralegals work with. Paralegals have to work on 'the other side of the lines of power' (ibid:427), with customary leaders (the powerful 'big men') and corrupt formal institutions. They can do little to change this landscape – this requires reform of state institutions – but they can influence it. Thus 'lasting institutional change [also] depends on a more empowered polity', with paralegals having a dual role: helping ordinary people deal with a dysfunctional state and governance system; and helping them become 'agents [of change] rather than victims.... [and] contribute to... reform from below' (ibid:427).

This last comment raises another important dimension of paralegal work, that of legal empowerment. Goodwin and Maru observe that for most poor people in the world, ‘the law is an abstraction, or a threat, but not something to use in exercising basic rights’ (2014:4). They go on to say that ‘legal empowerment is about reversing that trend, about giving people the power to understand and use the law’ (2014:4).

Timap has had considerable success, according to a World Bank review (Dale 2009). The same review finds that it could improve outreach activities such as using local radio, and do more rights education and advocacy, including in schools. Success stories, especially successful litigation should be publicized. The programme should also include traditional leaders in training on laws and human rights principles (ibid). Dale also found that while the gender breakdown of clients was around 50:50, women were ‘much more likely [than men] to have reported a case (rather than be a contesting party)’ (ibid:9). Thus Timap offers women a way to deal with issues like domestic violence and marital disputes which is not constrained by custom and influences attitudes on both sides, sowing the seeds of change amongst the men involved as well.

### 3.1.4 Namibia

Paralegals in Namibia go back to 1998 when the Legal Assistance Centre (LAC) was established as a public interest law firm. It was founded by concerned lawyers and union activists<sup>20</sup>, and has evolved into a strong organization defending the poor and with an important advocacy role, supported by an active publications and research programme. It is backed by an impressive list of donors and local and international partners, including the Ford Foundation, UN and bilateral agencies, and lawyer associations in Europe. Local law firms also provide *pro bono* service. Its mandate now goes beyond providing justice services for the poor to include activities to promote empowerment and change at a deeper level:

- litigation
- information and advice
- education and training

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20 See their excellent website, <http://www.lac.org.na>

- research
- law reform and advocacy

The Namibian Paralegal Association (NPA) was formed in 2003 'to be active in the promotion of citizens' rights and the training of paralegals'. The Association has trained around 260 paralegals (De Azevedo et al, 2012:63). Other NPA paralegals enjoy a close working relationship with the LAC, which also provides an umbrella of professional support to deal with complex cases or go to court.

LAC and NPA paralegals are the frontline troops engaging directly with local people, and deal with a wide range of problems, including land issues. Like the LRIC and Timap, they work within a structure which provides them with professional support when needed. And although Namibian paralegals are not yet officially recognized or regulated, being part of a larger organization with professional support and training resolves some of the limits imposed by the lack of recognition. For example, they can use litigation both as a threat and practical tool by passing on complex cases to LAC lawyers who can take them into the courtroom if necessary.

Paralegal training in Namibia is also evolving from the early days of basic legal training to a full two-year course provided through the University of Namibia (ibid: 63). It will be interesting to see if the paralegal movement remains intact or if it splits explicitly or in *de facto* terms into two types of paralegal, one remaining community-based and focused, the other taking on a more professional role and probably based in LAC offices and other out-posted locations.

### **3.1.5 Mozambique**

Like South Africa, the Mozambican Constitution guarantees legal assistance for all. Before the CFJJ-FAO paralegal programme began in 2006, the main source of legal support for the poor and disadvantaged was the public agency, the Institute for Promoting Access to Justice (IPAJ); and the civil rights NGO *Liga Mocambicana dos Direitos Humanos* (LDH) – League for Human Rights in English. IPAJ provides two kinds of support, 'legal technicians', who should have a law degree; and 'legal assistants' who do

not have a law degree but should have some legal training recognized by the Ministry of Justice (Cuna, 2010). ‘Technicians’ provide defence in civil and criminal cases and can appear in court with their clients. ‘Assistants’ can only provide assistance in minor cases, but they can work in areas where there are no lawyers or ‘technicians’. IPAJ legal support should be free for those who need it, but institutional issues and a generalised mistrust of officialdom have constrained its effectiveness (Ndlovu, 2005). IPAJ has recently been reformed and is strengthening its provincial delegations, but still lacks the human or logistical resources to make it more accessible beyond the main urban areas.

The LDH is long established and deals with prison conditions and the treatment of those accused of crimes. It mainly works in urban areas, with inmates in prison and others who are mistreated by official justice and policing services. In 2005 the League had 40 paralegals, of whom half were female (Ndlovu, 2005:10). Its paralegals are trained in-house by lawyers who are League members and also provide back-up. The League is the most well-known justice NGO in Mozambique, with offices in provincial capitals and some towns.

Newer organizations have more of a focus on rural areas and supporting vulnerable communities at a time of rapid economic growth and surging demand for land. A leading NGO in this area is *Centro Terra Viva* (CTV), which specializes in environmental and rural development issues. The CTV Director is a well-known environmental lawyer and activist, and is currently working with communities affected by large scale land acquisitions linked to the new oil and gas industry in the north (see Box 8 on pg. 91). CTV has also had close links with the CFJJ-FAO programme, which are discussed in more detail below.

CTV has been working with the International Development Law Organization (IDLO) and later with Namati, to find the best way for paralegals and lawyers to help communities prove and document their land rights. The IDLO project, which also ran in Liberia and Uganda, included the use of paralegals to educate communities about their rights and to use land rights delimitation methodology for identifying and registering rights

acquired by customary occupation.<sup>21</sup> The project also helps communities to write down, discuss and amend local land use (and other) rules, in order to strengthen women's land rights and institutionalize them at the local level, and develop community land use plans.

Four different kinds of support were tested:

- Legal education only, with monthly community training on the Land Law given by legal and technical professionals;
- paralegal support and monthly legal education and training as above;
- full legal support at all times and monthly legal education and training as above; and
- control/minimal informational dissemination, in which communities received copies of the Land Law and were given 'how to' guides on how to do land rights delimitation.

(Knight et al, 2012:33-37)

Results indicated that the most effective approach is the second one, where project-trained paralegals mobilized and worked with the local community, which also received monthly training in the Land Law and how to carry through a delimitation process (ibid:137-139). However, the paralegals in this project are different from many of those found elsewhere in Africa, and in in the CFJJ-FAO programme. The paralegals in the IDLO project receive just two days of initial training in the basics of the Land Law and related legislation including constitutional principles. Like other paralegals they continued to receive training during the monthly visits and community legal education sessions by project professionals, and thus acquired a more complete range of skills and knowledge. Nevertheless their limited initial training does add another dimension to the question 'What is a paralegal?', when it comes to training-based qualifications. Indeed the IDLO study itself says that 'Because these community members [the project-trained paralegals] were not professionally trained, board certified "paralegals",

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21 In Mozambique this methodology responds to the requirement in Article 24 of the Land Law, that communities participate in defining their own borders. It is legally prescribed in a Technical Annex to the Land Law Regulations. Tanner et al (2009) provide a complete account of this process.

these individuals were given other titles: in Uganda, the paralegals were termed 'Community Support Persons'; in Mozambique, they were called 'Community Mobilizers' (ibid:36, footnote 34). Compared with some of the paralegals in other countries and those trained by the CFJJ, perhaps their most important feature is that they come from and live in the communities they worked in, and are thus better able to motivate their neighbours to undertake and complete land rights and other activities.

CTV now has a 'Legal Support Office' with staff trained by the CFJJ-FAO programme. Their 'paralegals' have a dual role, being both CTV programme staff and community educators and legal advisors. They are not a 'paralegal service' of the kind provided by Timap, but instead play more of a 'rights training' and civic education role in communities participating in CTV projects. In this respect it could be said that their focus is more on empowerment than on conflict resolution.

The Organization for Rural Mutual Assistance (ORAM), is another large national NGO which has built up a paralegal team and employs its own lawyers as well. Most of its paralegals have been trained by the CFJJ-FAO programme, and now there are ORAM paralegals in most sub-national offices. Like CTV, they have a dual role as programme officers and legal advisors/community trainers, working with communities where ORAM has projects. They are not however a paralegal service like Timap or their Namibian counterparts. The longstanding national NGO, Lupa - *Associação para o Desenvolvimento Comunitário* – Community Development Association in English – also runs community development projects with staff who are trained as paralegals and then do community training on rights and how to use them within specific community development projects. Lupa is also notable because it participated in the earliest stages of the CFJJ-FAO programme, supporting pilot training in communities where they were working on community-based tourism and development projects.

Leading land law specialists work closely together in and around the extensive network of national NGOs and CBOs working in rural development. Some have been trying to set up a *pro bono* system whereby legal professionals will offer support to poor communities and



households in their spare time, on a costs-paid only basis. These and all the other examples discussed above underline the importance of having some form of in-house professional back-up for paralegals once they are trained and out in the field.

### **3.2 Training: knowledge and skills**

Good training ensures that paralegals know the basics of the laws they are dealing with, and can carry out their duties with technical and professional legitimacy. A complete package should also equip the paralegal with skills in mediation, adult education, and advocacy, in order to carry out the full range of challenges he or she is likely to find at community level. The variation in training is enormous however. South Africa has one-year paralegal courses that include formal legal process and court procedures. Namibia is also moving to a two-year course for paralegals provided by the University of Namibia. At the other end of the scale organizations do their own training, combining short intensive courses with in-service training and back-up by professionals.

Timap for Justice is a useful benchmark given its relative success. New paralegals attend an intensive two-week course covering the basics of law, the workings of government, and 'paralegal skills' including negotiation and mediation. They then continue to learn on the job with professional supervision (Maru, 2006:427). The ULA and LRICs also train their own staff, with in-service follow-up by field offices and senior staff. In Mozambique the LDH does its own training and has developed a Paralegal Training Manual. The League also collaborates with IPAJ over curriculum development and training for both its own paralegals and IPAJ 'technicians' and 'assistants'. IPAJ training is much longer and includes legal procedure and practice. Possibly the shortest formal training is given by the CTV-IDLO project team, where community-based paralegals received just two days of initial training in a specific area of land law – community land rights delimitation – and women's rights issues (Knight et al, 2012).<sup>22</sup> Like most other programmes, the IDLO paralegals also continued to receive in-

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22 Note, however, that those paralegals enjoy full support from a backstopping team, and participate in a montly community legal education programme over a period of several months.

service training by project professionals when they carried out monthly legal education meetings in the communities being supported.

In terms of basic or formal training, there is an interesting paradox here, in the continuum from high end qualifications able to deal with everything, through to basic training addressing a specific issue or problem. It seems that as the focus of paralegal work narrows onto one or two specific issues, less comprehensive training is required. In Figure 1, the grey arrow indicates a shift from less specialized to more specialized, with the South African case on the top-left, and the two-day initial training of the CTV-IDLO community paralegal focusing just on community rights delimitation.

**FIGURE 1**  
**Variations in paralegal education, training time and place of work**

EDUCATION	Working base			
	Law firm/ Gov't office	NGO head or regional office	Legal resource centre	Village/ community
Degree	X	X	X	
Secondary		X	X	X
Primary			X	X
Basic				X
				1-2 DAYS

*Source: Author notes and Aciro-Lakor, 2008; De Azevedo et al, 2012; Knight, 2012; Maru, 2006; and Ndlovu, 2005.*

These diverse examples and the nature of paralegal work in different circumstances demonstrate the need to establish some common standards for paralegal training. This does not mean that all paralegal training must be the same, or even at the same level, but that it should at least adhere to a common set of standards and principles. A starting point is that the right training is given to the right people for their specific set of responsibilities. The level of training provided also dictates the kind of back-up support to

be provided later, and whether paralegals are better working alone or as part of a larger professional team.

Whatever conclusion is reached over training, one thing is certain: if paralegals are to assume a greater role not just in resolving conflict, but also in mediating between local people and outsiders who want to use their land and resources, they need serious skills in mediation. In fact much of what they do involves negotiation to reach consensual or compromise agreements (for example, when communities confront investors and/or the state who want to use local land for new projects).

### **3.3 Certification**

Even in the North, many paralegals are not formally licenced or accredited, and in most cases certification and accreditation are handled and regulated by professional bodies rather than by statute. In some countries certification is voluntary; in others legal firms hire on the basis of educational qualifications and firm-specific criteria (Hill, 2008:3). Yet certification may be important for the client, who wants to be sure that the paralegal is what he or she says they are. Having some kind of official certification appears to be more important in Africa, where professional bodies and other non-state guarantors of competence are less numerous and have their own weaknesses. State agencies and their staff often query the legitimacy of paralegals who claim some kind of legal role yet do not have a 'recognized' piece of paper. Some type of formal proof of at least a minimal level of training provided by a reputable entity is therefore useful if paralegals are to avoid simply being ignored, or worse still, arrested and imprisoned.

The 2005 survey referred to above found that in some countries up to 70 percent of paralegals have government endorsed certificates (Zimbabwe), while in others it can be as low as 10 percent. In Namibia there is a clear difference between men and women paralegals, with 40-70 percent of men having certificates and only 1-10 percent of women (Ndlovu, 2005:20). Apart from governments, other institutions provide paralegal qualifications, including NGOs and universities. This

diversity of certification reflects a similar diversity in types and level of training. In South Africa, with its long established paralegal movement both in legal firms and at community level, 'a wide range of institutions are providing qualifications for paralegals...including NGOs, universities and government. As a result, qualifications range from certificates of attendance, to university level qualifications' (ibid:6).

### **3.4 Legal recognition**

Linked to the certification issue is the question of legal recognition for paralegals and what they do. Most countries do not officially recognize paralegals. A notable exception is Sierra Leone where, some twenty years after Timap for Justice opened its doors, a law was passed in Parliament giving paralegals the formal recognition they have long sought.<sup>23</sup> This law 'enshrines the role of paralegals - rather than only fully qualified lawyers - as a basic element of the System....[and] provides for a mixed model of criminal and civil legal aid, from provision of legal information and mediation services through to representation in court, and supplied through a public/private partnership of government, private sector and civil society' (Sierra Express Media, 2012). Paralegals are to be posted in each of the 149 chiefdoms that are an integral part of local governance in Sierra Leone. This will ensure that 'a flexible and cost effective method of delivering justice services to large parts of the population will be available'. The law also 'endorses university law clinics, civil society organizations and non-governmental organizations, alongside legal practitioners, as providers of legal aid services' (ibid).

Those in favour of recognition argue that it would remove institutional and political barriers to paralegals working at local level. A National Meeting on Recognition of Paralegals in Mozambique in 2004 sought to promote 'the concept of the paralegal in relation to the Justice Administration bodies and to create a favourable environment for legal recognition' (National Meeting, 2004:1). The meeting noted that paralegals face 'difficulties and shortcomings...due to a lack of legal recognition and due to general unfamiliarity with paralegals' (ibid:1). Field evidence also suggests that

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23 The Legal Aid Act, N°6/2012.

some form or legal recognition linked to certification would overcome opposition to paralegals amongst local government officers and others who question what they are doing and their right to do it.<sup>24</sup> It is the work of the paralegal on the ground however that seems to gain them the most meaningful recognition. In Mozambique there is ample anecdotal evidence that the District Administrators are realizing how useful they can be, and are seeing the paralegal as a key figure for resolving conflict and assisting with local development initiatives.<sup>25</sup>

### **3.5 Autonomy, adaptability and trust**

Compared with their Northern colleagues, many African paralegals have a high degree of autonomy and undertake a wide range of activities. This reflects not only the obvious challenges of working in rural Africa, but also the absolute lack of other services and support to which local people can turn. For example, it is difficult to imagine a paralegal in a UK law firm or university law clinic in the following situation:

‘Villagers...approached our paralegals to complain that they were cut off from basic services because of the condition of the feeder road....in response [the paralegals] organized village residents for a day of voluntary, collective road maintenance’  
(Maru, 2006:427)

This is a situation that anyone who has worked in rural Africa will recognize. In a landscape rich in diversity and teeming with vitality, where local people are skilled in dealing with the challenges of the local environment and their own poverty, it is difficult to access solutions for problems that require ‘outside world’ skills and knowledge. Projects with sympathetic and competent staff quickly become the support of choice for many other things besides their specific area of work. And their staff will be assessed as relatively honest compared with corrupt local officials. For example, Maru talks of a local police officer complaining about people

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24 Given the importance of mediation as a key activity for most paralegals, it is useful to note that Mozambique already has an Arbitration and Mediation Law (Law 11/99 of 8 July).

25 Notes from meetings with NGO teams and field visits in Mozambique, March 2013; National Paralegal Conference, Maputo, December 2013.

taking their grievances to the 'human rights officer' instead of the police, and admitting that this was because 'the human rights people don't take money' (ibid:426).

### **3.6 Women paralegals**

The 2005 survey of Southern African paralegals provides some information about women working as paralegals. Across the region the proportion of paralegals who are women varies between 30 and 50 percent (Ndlovu, 2006:10). Ndlovu also notes the 'impressive level of involvement of both women and men...Paralegal training and support organizations have often promoted fair representation of both women and men in the training courses and in many cases women can be seen to be playing leading roles both at local level advice offices and in training organizations' (ibid:27). As well as offering women ways to resolve disputes which customary rules and norms cannot resolve (or indeed create), they offer important role models for women being independent and able to assume a professional role.

### **3.7 Working with the legal profession**

Arguments are often heard against the use of paralegals from legal professionals in Africa. Lawyers fear that paralegals, especially if allowed to undertake court work at even the most basic level, will take work away from them (Ndlovu, 2005:17). This argument is easily overturned when the volume of need is seen alongside the reality of professional legal support available to the average citizen. In Sierra Leone in 2010, there were just ten magistrates sitting and five of those were in Freetown, the capital; ten of the 12 High Court judges sit in Freetown; and of the roughly one hundred practicing lawyers, ninety are also based in the capital. The situation in Mozambique is apparently better, with some 700 qualified lawyers in 2008, but as Hill notes, this still means a ratio of 1 lawyer per 26 000 people. Moreover, lawyers tend to focus on casework and conflicts, rather than being proactive and advisory. Hill adds quite rightly that 'as lawyers deal with many different cases at the same time few are able to

dedicate time to work in a developmental way with communities on their problems' (2008:11).

Cost, communications, language and distance all make lawyers inaccessible to the average person. Paralegals on the other hand can offer basic legal support to poor populations at local level. We should not be fooled however into thinking that this response is anywhere near adequate at this point. Ndlovu comments on the sheer volume of work that is out there, and the 'very small number of paralegals overall in terms of the populations we are working with'. She adds that 'the room for expansion is immense' for both paralegals and lawyers (2005:10).

The examples discussed above also point to the need to have teams of paralegals and lawyers working together. While the paralegal can do a range of tasks without professional support, situations always arise where qualified legal assistance is necessary, or where only a qualified lawyer is able to assist. This is especially so if litigation is being considered, where the paperwork required has to be correctly presented and paralegals are usually prevented by law from appearing in court on behalf of their clients.

### **3.8 The future for paralegals**

The new Legal Aid Act in Sierra Leone is a breakthrough in continental terms and an important precedent for other countries to follow. It remains to be seen however if this long anticipated formalisation will strengthen the paralegal movement in Sierra Leone, or weaken it in some way by subjecting it to statutory controls and possibly a more rigid set of operating parameters.

Meanwhile paralegal programmes are evolving well in several countries where there is no official recognition of their work, and doing important work not only to defend the poor but also to change attitudes and promote a more inclusive approach to development on the part of local government and other stakeholders. The quest for legal recognition should not undermine their independence, but some form of certification or endorsement by an appropriate professional body does appear necessary.

Paralegals themselves also want recognition to establish and develop a profession they clearly believe in. The recent National Paralegal Conference in Maputo ended with an overwhelmingly unanimous call to work towards the statutory recognition of paralegals in Mozambique. This is running in tandem with setting up a national organization to integrate provincial Paralegal Associations that already exist and to defend the interests and independence of the paralegal in practice.<sup>26</sup>

As for a definition that is more appropriate for the African context, the examples above reveal a wide variation in what we call a 'paralegal', ranging from degree level people with 1-2 years of specialized training, to village residents with basic education and just 1-2 days of initial training on the most basic aspects of the laws they will work with. Compared with paralegals in the North however, the focus of their work is more geared towards assisting the poor, and in many cases takes on an advisory and civic education or mobilising role.

A common thread in the best cases is that they work in teams with back-up provided by professional lawyers. This support is more or less immediate depending on the geographical circumstances and resources that are available. Often the paralegal will work alone and with a degree of autonomy unheard of in the North.

Another characteristic of the African paralegal is his or her role in facilitating and extending access to justice, which in many cases includes dealing with corrupt or intransigent public institutions and their staff. In many cases their work is about bypassing legal systems that do not work. In the case of Timap for example, it is clear that the primary focus is on resolving problems for people who cannot find solutions in remote and inaccessible conventional legal or justice systems. Mediation figures prominently; litigation as a last resort and used as a threat in the background – the 'colour of law'. While they are aware of the empowerment and mobilization impact of their work, this is not their principal focus.

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26 National Paralegal Conference, Maputo, December 2013. Author notes from participation.



In other places paralegals do far more than helping individuals to overcome the shortcomings of dysfunctional justice services. The Legal Assistance Cluster definition also includes education and community organization. In Uganda and Namibia the Centres have advocacy and policy roles as well. Paralegals educate people about their rights including over land, they provide support in cases of conflict, and they feed empirical information back to the higher levels of the organization which are engaging with government and others on policy issues.

The newer rural development NGOs in Mozambique have development and using rights as their primary focus, and do not offer a 'justice service' as such. Like the ULA in Uganda, advocacy in favour of local land rights and community interests *viz à viz* more powerful groups is an essential part of their work. CTV paralegals for example have development-focused 'terms of reference', as community educators and as field officers promoting the best use of the Land Law and its innovative instruments.

To summarise this discussion, it is useful to list the following aspects of 'paralegalism' as we move on to discussing the CFJJ-FAO programme:

- The paralegals we are dealing with are the second and third category in the classification proposed by Francina and Ndlovu – they work at local and village level rather than as legal support staff in legal offices and government departments.
- 'Conventional' paralegal work provides solutions to injustice and grievances, but in Africa especially paralegals are taking on empowerment and advocacy work as well, building local capacity to challenge 'the barren institutional landscape' which is a major cause of injustice.
- Paralegals can also facilitate community dialogue with the local government and service providers who make up the 'institutional landscape' in which they live and work.
- Mediation and negotiation is by far the most common form of support provided; and this requires specific skills and training to be done effectively.

- Paralegals work most effectively in a network with qualified professional lawyers, although it is not yet clear what model works best.
- ‘Paralegalism’ offers the possibility of having a more or less permanent presence at local level which would not be possible with a purely *pro bono*, lawyer-based approach.
- The training and educational profile of paralegals varies widely, and has important implications for what they can do and how well they do it.
- Recognition and professionalization offer guarantees of competence as well as protection from abuse by vested interests, government officers, and in some cases, legal professionals.
- Working with [male] customary leaders is as an important aspect of working around gender issues and gender-related injustice; the call by Dale to include ‘traditional leaders in training on laws and human rights principles’ resonates strongly in this context.
- Paralegals are important sources of empirical evidence for the organizations they work for, supporting advocacy work for policy and institutional change that will address injustice and promote social and economic equality in a more profound and structural context.

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## **4. The CFJJ-FAO paralegal and local government programme**

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### **4.1 The genesis of the programme**

FAO has been supporting land and natural resources issues in Mozambique since the early 1990s (De Wit, 2006; De Wit et al, 2005; FAO, 1994). The end of the Civil War in 1992 and earlier constitutional changes embracing political pluralism and a market economy were already resulting in conflicts as refugees and displaced persons returned to find investors getting official 'land use and benefit rights', or DUATs, over land they had abandoned when they fled (FAO, 2002). Cooperation partners were worried that a failure to address these issues in a fragile post-conflict situation could lead to renewed violence. In 1994, the Government asked for FAO technical support to the 'Ad Hoc Land Commission' at the Ministry of Agriculture and Rural Development, to bring the 1976 Land Law into line with the market economy and to secure smallholder and 'family sector' land rights.

FAO proposed a more inclusive inter-sectoral review of the policy and legal framework. A new Interministerial Commission for the Revision of Land Legislation ('the Land Commission') brought together several government sectors, civil society and academics, and within two years it had produced the 1995 National Land Policy (NLP) and 1997 Land Law (ibid). By the end of 2000 all the necessary regulations and legal instruments had also been developed and approved. Implementing a new policy and legal package is however often the first hurdle where good ideas fall and the potential for genuine reform is lost. The NLP implementation strategy included reforms to the public land administration, but these were never put in place and state land services have since continued to focus on serving private sector and elite interests. Community rights have received little real attention until very recently. Several years ago public resources were scarcely sufficient to identify and record the land rights of more than two or three communities a year (CTC Consulting, 2003). It is thanks mainly to NGOs that this part of the Land Law was addressed, and even today most

community delimitations are still done by NGOs using non-government funding.<sup>27</sup>

From the outset the 1997 Land Law posed a significant challenge to a political system which sees the state – as Constitutional ‘owner’ of all land – as having an almost absolute right to manage land and resources as it wants. Not only did the law give automatic recognition to all existing rights acquired by occupation, it also devolved significant management powers to local level. Government power to allocate land to those it approved of was significantly limited. Without effective judicial oversight however, and with a rising tide of conflict caused by the new demand for land for investment projects, it seemed likely that the rights enshrined in the Constitution and the new law would be abused or simply ignored.

Between 1998 and 2000, FAO worked with the Land Commission and civil society to develop an innovative approach to identifying and recording the acquired rights that were now legally recognized but still not registered in official records (Land Commission, 2000). In the early 2000s, FAO also began looking for a partner to ensure that the rights-based approach enshrined in the Land Law was adequately supervised and maintained. The result was the first CFJJ-FAO programme, which responded to the NLP implementation strategy which said that ‘In order to resolve [land conflicts resulting from the titling process in the new law] it is necessary to train the district and community tribunals and reinforce the jurisdiction of the State at local level’. The NLP added that ‘as well as a legislative revision regarding the jurisdiction of these tribunals [over land]...the system will be reinforced with training for judges and justice auxiliaries, especially in questions relating to land’ (Serra, 2012:35).

The need to include judicial training as part of land law implementation was treated with some doubt by the land administration, whose view was (and probably still is) that the major need was to technically upgrade and materially strengthen land administration services. Governance issues, exemplified by ensuring judicial oversight, were poorly understood. Nevertheless FAO succeeded in convincing key actors including the

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27 The multi-donor Community Land Initiative (iTC) is a good example, with USD 12 million so far made available to the project to support communities which want to delimit customarily acquired DUATs.

judiciary itself that the judicial component was essential. The result was the first of four projects at the CFJJ. The first project<sup>28</sup> focused on training provincial and district judges and public prosecutors in the Land Law and other new laws for Forests and Wildlife, and the Environment, also developed with FAO support. Some 199 judges and prosecutors were trained and legal texts and annotated commentaries on the new laws were produced.<sup>29</sup>

The project had also intended to train lay judges in Community Tribunals. These courts operate alongside traditional justice mechanisms dealing with local issues like family disputes and petty crime (Sousa Santos and Trindade, 2003). Government proposals to reform the Tribunals led to the training being replaced by a research study to understand the role of judicial and local government bodies in land and natural resources conflicts. A total of 165 conflicts across the country were analysed, looking at their causes, how they were dealt with, the institutions involved, and what the outcomes were (FAO, 2004[b]).

The first conclusion was that although communities knew something about the Land Law thanks to initiatives like the NGO Land Campaign (Negrão, 1999), they had little idea about how to defend their rights, or how to engage in community consultations and use their rights to produce tangible economic and social benefits. The gender and women's rights aspects of the Land Law were virtually unknown. And few rural people saw the judiciary as an appropriate or useful place to address land rights issues, seeing it like a sector dealing with crime, while other departments dealt with land and natural resources. When they need some kind of definitive decision on a land dispute, they went to the District Administrator as a quasi-judicial and political authority.

Secondly, the research underlined how the unequal power relations between local leaders and local government actors were instrumental in both creating conflict, and in reaching 'solutions' which were often seen

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28 GCP/MOZ/069/NET, 'Support to the Judiciary in Implementing Land, Environment, and Forest and Wildlife Laws', implemented with funding from the Kingdom of the Netherlands, 13 Dec 2000 - 31 Dec 2004.

29 The Land Law compendium referred to in this paper (Serra 2012) was the first, now in its 4<sup>th</sup> edition.

as unjust by the community. Ordinary people were rarely involved in the processes leading up to the conflicts. It also showed how government officers knew very little about the new laws and almost nothing about how to use mechanisms like delimitation and community consultations to promote a more equitable and inclusive form of local development (FAO, 2004[b]:Conclusions). An impact study of the judicial training also showed that even judges and prosecutors trained in the new laws were rarely involved in land cases, and were overwhelmed with other business (FAO, 2004[a]).

Thirdly, local institutions paid little heed to the question of women's rights over land. This took on special meaning whenever HIV-AIDS entered the picture, and women stood to lose all their assets and access to land when husbands left them widowed at a prematurely young age. New measures were therefore needed to deal specifically with women's rights over land and how these could be defended in practice using the provisions of the Constitution and 1997 Land Law.

These conclusions paved the way for a second phase of CFJJ-FAO cooperation to address these practical dimensions of implementing the Land Law, beginning in 2006 with a project with twin, complementary aims: to 'legally empower' local people by providing community level legal support, and to strengthen the capacity of local institutional actors to correctly implement the law in pursuit of just, equitable and sustainable development.<sup>30</sup> A second project consolidated the approach and extended the institutional focus to include the *Direcção Nacional para a Promoção de Desenvolvimento Rural* (DNPDR) – National Directorate for Promoting Rural Development in English – to ensure a greater rural development and economic impact at local level.<sup>31</sup> A third project introduced a dedicated component for gender and the land and resource rights of women<sup>32</sup>, fully integrated into the wider programme.

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30 GCP/MOZ/081/NET, 'Decentralized Legal Support and Capacity Building to Promote Sustainable Development and Good Governance at Local Level', funded by the Kingdom of the Netherlands, 01 Sep 2005 - 30 Jun 2010.

31 GCP/MOZ/096/NET, 'Promoting the use of land and natural resources laws for equitable development', funded by the Kingdom of the Netherlands, 01 Apr 2009 - 31 Dec 2012.

32 GCP/MOZ/086/NOR, 'Community level legal education and support to help rural women secure and exercise land and resource rights, and address HIV-AIDS related tenure insecurity', funded by the Kingdom of Norway, 01 Mar 2010 - 30 Apr 2014.

## 4.2 The twin-track approach

The two complementary lines of work in the programme constitute what is called the 'twin-track' approach. This assumes that the correct implementation of the new Land Law and other related environmental and natural resources laws can best be achieved on two simultaneous fronts:

- through the legal empowerment of local people and communities who then begin to demand that their rights are respected and that they should have a voice in local development issues; and
- through capacity-building work with local government and judicial officers, showing them how the new laws work in practice and – if they are correctly used – how they can produce a participatory and negotiated settlement between all stakeholders with rights over land and natural resources and an interest in how they are used.

**FIGURE 2**  
**The 'twin-track' approach**



The programme therefore has two main elements: training paralegals to provide community legal support and empowerment; and public sector capacity development and (implicitly) attitude-changing. The former has

a 'bottom-up' focus, generating awareness of rights and creating more demand for a better response to community needs from local government and other relevant public sector actors. This second element has more of a 'top-down' role in the sense that it manages development and implements laws at local level, and must respond to the communities and individuals who live there (Figure 2).

The approach is not simply 'pro-community', always prioritizing community concerns over those of other interest groups. Instead, it takes into account the rights of all those who have an interest in using land and natural resources either for their own immediate needs, or for commercial or conservation purposes. A central concern is to ensure that private investment is not always seen as the 'bad guy', and offers opportunities for local people to grow and benefit if it is planned and implemented in the right way – in collaboration with local people. Thus, while conflict resolution is one part of a paralegal's work, perhaps the greater focus is promoting better governance and preventing conflict through a more people-centred approach to the whole issue of local planning, project approval, and the participation of local stakeholders.

The legal empowerment side of the process – the bottom-up part – centres around the paralegal programme. These paralegals are trained specifically in the land and other laws that regulate natural resources, as well as in other legislation such as tourism which has a direct impact on the way that projects using local land are implemented. The paralegals go back to work amongst communities where the resources and economic potential of the area are attracting investors and where there is therefore likely to be conflicts with local people. The paralegal course also has specific methodological features, discussed below, which are designed to promote and facilitate interaction between all the various stakeholders.

As for the local government side, this brings together 'sectors' which traditionally are not often considered together in development programmes and training courses. Thus the 'district officers' seminars' include the District Administrator, the District Judge and Public Prosecutor, the District Director for Economic Affairs (usually responsible for land management), and the District Police Commandant. Other training sessions work with



senior staff of National Parks and conservation areas, and the Republican Police who are setting up a department dealing with environmental and forest and wildlife laws.

To add more weight to the economic development objectives of the programme, there are also seminars for staff from the DNPDR and specialized agencies looking after local district planning, such as the Investment Promotion Centre (CPI) and Centre for Promoting Agricultural Investment (CEPAGRI).

Gender and women’s rights issues are mainstreamed through all these activities and there are also specific activities that focus on gender and women’s rights, including specific components in all the training activities and community-based follow up by CFJJ and partner NGOs.

All these activities are implemented as an integrated and internally reinforcing package (Box 4). Thus one set of activities develops skills and capacity that, in principle, then interact with the training outcomes of the other activities.

<b>BOX 4</b> <b>Main elements of the CFJJ-FAO integrated training programme</b>
<ul style="list-style-type: none"><li>• Paralegal courses, including training materials;</li><li>• capacity development for district officers, judiciary;</li><li>• training for tourism sector staff working in conservation areas and National Parks;</li><li>• training for government agencies involved in rural development and investment;</li><li>• training for police officers responsible for environmental and related issues; and</li><li>• specific activities focusing on gender and women’s rights.</li></ul>

One of the more interesting aspects of the CFJJ-FAO programme is the fact that it is a ‘national’ programme which reaches right down to local and even village level in all parts of the country. Each course is limited to a

maximum of around 25 participants, the largest number allowed by the CFJJ for the participatory teaching methodology to be viable. At the start of the planning phase for each year, locations are chosen across the country, in provincial capitals and larger towns, and NGOs and local government agencies in these areas are invited to send staff to the courses.

The programme has also reached right down to village level in all parts of the country. As discussed below, the courses also include practical activities where the participants visit communities where some kind of land or resource conflict has been happening. In this way, this ‘national’ programme run by a single central level institution extends across Mozambique, and down to local level as well.

### **4.3 Paralegal training**

#### **4.3.1 Who are the paralegals?**

Taking a lead from South Africa, the ‘paralegals’ trained by the CFJJ were seen as a link between communities and higher level professional and technical support, and would not necessarily be ‘of the community’ and living in it. In this context the CFJJ-FAO paralegal programme was developed to provide four basic services to communities:<sup>33</sup>

- mobilization
- civic education
- legal advice
- legal support

Given the relative complexity of the material to be covered in the courses and the challenge facing the paralegals in the field, it was also decided to go for what is called in Mozambique the ‘middle level technical officer’ category of field worker – somebody with secondary education at least, and perhaps a vocational qualification of some sort, as well as some experience already in community development where land and resources figure prominently. The CFJJ team invited both NGOs and provincial

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33 Taken from the Guide to the Paralegal Courses, produced for each course (see below).

governments to send appropriate people from their existing staff who matched this profile. All costs were covered by the project, although the NGOs were asked to make a small contribution to fieldwork costs in the second week.

The participation of local government officers does raise questions over whether or not they are subsequently 'paralegals' – clearly they cannot provide all four of the services listed above and must continue to work in their official capacity after the course. However, based on earlier FAO experience when field staff from NGOs and government were trained together to carry out community rights delimitation, including government people in the training ensured that both sides heard and understood the same messages regarding the various laws and how they should be applied; and having both groups together improved the working relationship between these often opposing groups of technical staff. Both groups received the CFJJ Paralegal certificate however, and those on the government side work as paralegals in the sense that they supported their departments with basic legal skills and knowledge.

There has never been any lack of take up by the organizations and local governments working with the CFJJ on the programme. This includes organizations and associations that have taken part in courses with a specific gender and women's rights focus, where if anything demand has been even greater.

#### **4.3.2 Structure and strategy of the training**

The format and basic materials of the paralegal course were developed during two pilot courses in 2006, and built upon earlier FAO/Land Commission experience when public sector and NGO staff were trained in the methodology for delimiting community land rights. Thus the structure of each course includes one week of intensive classroom sessions; two days of fieldwork visiting selected communities; and two days of field analysis and interactive sessions to assess the work of a paralegal in practice.

Another key feature of the earlier Land Commission courses that was replicated and strengthened was to include both NGO and government staff in the same trainings, with two fundamental objectives:

- to ensure that both sides – often in opposite camps when interpreting the laws – receive the same message about the content and application of the laws that govern land and resources; and
- to foster better working and collaborative relations between key groups of field staff who are each responsible in different ways for implementing the policy and legal framework.

Something else that was continued in the new programme was the combination of classroom based teaching with practical field activities which helped the participants to understand the new material in a real life context and to practice their new skills with support from trainers. A strong participatory methodology has also been at the heart of FAO's work in Mozambique since the days of Land Commission training, and this was also carried through to the CFJJ programme.

This approach is well matched to the 'in-house' CFJJ commitment to interactive and participatory training methods as its basic pedagogic methodology. All CFJJ trainers receive specialist training and attend refresher courses to equip them for adult education work. Other innovative training approaches were developed, including the use of theatre groups to show communities what paralegals do, and also to encourage discussion of practical issues during the course.

The 2004 research had shown that without a greater awareness of their status as citizens *viz à viz* the state and other actors, communities and households were unlikely to make full use of their rights. It was therefore decided to open the course with a session on fundamental rights and basic principles of citizenship and governance, starting with the concept of the state including both citizens and political authority. This is important in Mozambique where 'the State' is often confused with 'the Government' in the minds of ordinary people. 'We are the State' is an important affirmation made during this session, linking this to Article 11 which includes 'the construction of society based on social justice and the creation of the

material and spiritual well-being, and quality of life of citizens' as one of the 'Fundamental Objectives' of the State, and by extension, its appointed agents (i.e. 'the Government'). Moreover this underlines the idea that while 'the State' owns the land, in fact 'we the people all own it'.

Understanding this constitutional underpinning of some of the more progressive elements of the 1997 Land Law is also an important objective of the course, not just for the paralegals but also for local government participants. And to address the gender issues within land management and use, this introductory session discusses the fundamental rights of women in the Constitution and their equal status with men before the law. Finally the separation of powers is also discussed, underlining the oversight role of the judiciary when government implements laws, and its role in civil and rights-based as well as criminal cases.

The course then moves on to the main land and resources laws. Just three laws were included at the initial stage of the programme: land, forest and wildlife, and environment. As it developed and new laws were passed, others were added to what has become a comprehensive and demanding package covering a wide range of resources, as well as economic and environmental issues. Thus the course now includes the core three laws above, and laws covering mining, water, and fisheries, as well as territorial planning and family law. Each course is modified slightly to respond to the specific characteristics of the region in which it takes place (for example, mining law gets greater attention if it is away from the coast and near an area where new mining activities are planned or underway).

The 'law modules' are followed by sessions that focus on using the laws to achieve an equitable and sustainable development process. The first of these sessions looks at how to use the various legal rights to promote a rights-based, participatory and inclusive model of rural development in which all sides gain: communities, investors, and the state. Using delimitation to prove and mark out a DUAT acquired by customary occupation is a key topic, establishing the basis for community projects or engaging with other actors who want to use local land and resources. How to establish partnerships between investors and local communities is a central theme

in this discussion, which looks at how negotiated and inclusive forms of land management can feed into local government planning processes.

The second focus is on gender and the land and resource rights of women in both customary and formal contexts. It begins with the concept of gender applied to both men and women, and the basis of women's rights in the Constitution as well as in international accords such as Convention on the Elimination of All Forms of Discrimination against Women. Subsequent sessions then look at how women can use formal laws and legal support to protect their rights, and the more complex issue of how to change existing norms and practices at community level. The strategy is not to provide individual women or women's groups with a way to avoid prejudicial customary practices, but rather to encourage communities to reassess local norms and practices and incorporate modern notions of equality for both men and women. Women are of course also told how they can use the formal law to protect and secure their land and resource rights if they have to.

The last three classroom modules look at conflict resolution, beginning with extra-judicial means including mediation. A short theatre presentation illustrates the role of a paralegal or lawyer in a community about to lose its land to an investor who has not followed the correct procedures. This is performed by a local NGO theatre group from the area where each course takes place, following a basic sketch developed in the pilot courses in 2006. Participants then get a grounding in the workings of courts and how to present necessary documents such as petitions and case summaries. These sessions also include the President of the Provincial Court or Provincial Public Prosecutor General from the province hosting the course – for most participants this is the first time they will have had this kind of contact with a public figure normally seen as remote and inaccessible.

In the second week participants are divided into groups of 4-5. Accompanied by a CFJJ trainer, each group visits a community with a land or resource conflict. They discuss the conflict with the community and visit local government and other actors, including if possible the other party to the conflict (investor, etc.). They tell the community about their legal rights and what they can do to resolve the problem. Measures include mediation,

or legal action if necessary, with paralegals acting as a link to professional legal support, or helping with documents to present to the district Public Attorney or Judge. The paralegals also talk about gender issues and how a more gender-equitable access to land and natural resources is good not just for women but for the whole community.

The final two days are spent in group work analysing the community meetings, and discussing the overall impact and lessons learned from the course. Each participant is assessed – ‘very good’, ‘good’ or ‘satisfactory’ – and awarded a CFJJ Certificate as a ‘paralegal in environment, natural resources and development’. Those who for one reason or another do not fulfil all the requirements receive a written statement that they have participated in the course.

### **4.3.3 Hundreds of paralegals**

The CFJJ has carried out 38 paralegal courses since it began in 2006. A total of 899 paralegals have been trained, 328 (36 percent) of whom are women (Table 2). More than half of these courses have been directly supported by FAO, which has provided funds<sup>34</sup>, training resources, and technical assistance to develop the programme and then support its implementation. The other courses have been funded by other projects and clients who have decided to use the paralegal model developed with FAO support. These include courses for the iTC, a large multi-donor fund for supporting delimitation and community development. Including those trained directly by the CFJJ, the iTC now has a total of 456 paralegals, 131 of whom are women (iTC, 2013).<sup>35</sup> Courses have also been arranged for other UN agencies such as UN Women and UN Habitat. All of these courses have benefitted from FAO technical assistance and training inputs provided through the CFJJ-FAO projects.

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34 The development and first phases were funded by the Kingdom of the Netherlands. The Gender and Women’s Rights project (discussed in detail further on) was funded by the Kingdom of Norway.

35 The iTC has been supported initially by five donors including the Department for International Development (DfID) and the Netherlands; an extension of the programme to four other provinces in the north of Mozambique was funded by the Millennium Challenge Corporation Land Component.

<b>TABLE 2</b>			
<b>CFJJ Paralegal Courses and Participants, 2006 – 2013</b>			
	<b>Courses</b>	<b>Participants</b>	<b>Women</b>
<b>Total</b>	38	899	<b>328 (36%)</b>

*Source: CFJJ Academic registry*

National NGOs have also begun asking the CFJJ to carry out courses for them, notably the CTV, which has already been mentioned in the brief review of paralegals in Chapter Three. Since 2012 CTV has been working more closely with FAO as an implementing partner for the more recent phases of the CFJJ programme (see below). CTV and the other large national NGO ORAM have participated in higher level refresher training for the best of the paralegals trained by the CFJJ-FAO programme. By the end of the programme in 2014, 7 refresher courses had been run, for a total of 141 participants, 59 of whom (42 percent) were women<sup>36</sup>.

CTV has also paid the costs of CFJJ training for its own new paralegals and those from communities where it has projects running. It is then able to provide follow-up support for its own paralegals to use their skills in practice, carrying out community meetings in the areas where they live and work, and raise awareness on community land and natural resources rights and gender issues.

#### **4.3.4 Training materials**

An essential part of any training programme is the development of relevant materials. The CFJJ has developed a range of techniques and accompanying material to train the paralegals and to help them work with their community target groups. The first of these is the use of theatre, with each course including a twenty minute play presented by a theatre group from a local CBO to show how paralegals can help communities involved in land conflicts. This technique is used both to train the paralegals, and to get the paralegal message across to their communities when they return.

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36 Project data, GCP/MOZ/086/NOR.



Typically, an investor arrives in a rural area accompanied by a local government officer who is keen to help the investor. When he (or she) says that the investor can have all the land they want, there is always an excited and often hilarious reaction from the audience. A conflict quickly develops with the community living nearby. Someone from the village has heard of a paralegal and calls them to come and help. When the paralegal arrives he (or she) tells the community what their rights are and explains what they can do. The investor either leaves or is obliged to sit down and negotiate over the land deal. Each group can adapt the story to local circumstances (for example some plays are about wildlife issues like illegal hunting or conflicts caused by forestry concessions).

A comprehensive Paralegal Manual in Environment, Natural Resources and Development was produced in 2010 (CFJJ, 2010) as a reference work for the course. It begins by discussing what paralegals do, followed by a topic-by-topic discussion of each part of the course. A second edition has already been developed (CFJJ, 2012) with an extended gender and women's rights chapter that includes a comprehensive listing of all the constitutional and legislative provisions in Mozambican law that underpin the rights of women over land and natural resources. Relevant provisions in new family legislation are also included. The Manual includes a CD-ROM with PowerPoint slides and other visual material which paralegals need to run their own training events. A technical guide on gender equality and land rights to support paralegals during their field work has also been produced.

The reference Manual is complemented by a Paralegal Trainers Manual which shows how to plan and implement a paralegal course, including a layout of each session, the materials needed, the timing and objectives of each session.

The CFJJ and FAO also share a commitment to participatory and interactive training techniques. The CFJJ runs its own courses in this methodology for all its trainers, and the paralegal course also has a separate module on adult education and participatory training technique to help the paralegals get their messages across once they are back in the communities where they work.

Finally, each course provides the participants with technical texts and other material which they would normally not be able to access due to lack of availability and price. Each person receives legal compendiums covering land, environment, and forest and wildlife (these published texts are now in their 4<sup>th</sup> editions after first appearing in the first CFJJ-FAO judicial training project<sup>37</sup>). Photocopies of other laws and relevant publications are also provided.

#### **4.4 District officers' seminars**

These seminars are the core element of the second track of the 'twin-track' approach. They bring together key district-level public officials to discuss the legal framework, clarify issues of interpretation, and understand how to apply the laws correctly. The seminars also help these officials to understand their roles and how they can work together more effectively. The focus is on promoting a more equitable and sustainable form of local development, where investors, communities and the State negotiate and work together to find a mutually beneficial way forwards. This process is also linked to the development of District Land Use and other planning instruments which can then more genuinely reflect local needs and can help communities and investors carry out their respective projects.

Districts are selected on the basis of their potential for conflict over resources, or the presence already of significant conflicts. Each district sends the District Administrator, District Judge and Prosecutor, Police Chief and Director for Economic Affairs. Each seminar accommodates 6 districts, and in most cases all of these officials attend. Between 2006 and 2013 the CFJJ has carried out 16 district officers' seminars reaching a total of 443 public officials (Table 3). Of these, 96 (22 percent) were women, reflecting the still low representation of women in district government and judicial posts (Table 2); there were no women amongst the Police Commandants. The CFJJ does not hold up-to-date information broken down by post, but based on earlier 2009 data, the total of 443 can be divided more or less equally between the six categories of officials attending.

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37 For example the Land Law Compendium cited several times in this document (Serra 2012).

<b>TABLE 3</b>	
<b>District officers' seminars, 2009-2013</b>	
<b>16 Seminars</b>	<b>Participants</b>
Men	347
Women	96 (22%)
<b>Total</b>	<b>443</b>

Source: CFJJ Academic registry

The seminars also begin with basic Constitutional principles and the key features of the Land Law and other relevant legislation, but unlike the paralegal courses they focus directly on the use of the legal framework to improve the governance of land and natural resources and promote a more equitable development process at local level. There is also a strong gender component, when participants can discuss issues such as how customary and formal laws treat women and their land rights.

The 2004 research also showed that there is often poor communication between the ‘executive and judiciary’ at local level, and while the District Administrator often struggles to implement the Land Law, he or she could easily get advice from the local judge who is probably just over the road from or even inside the district government building. Thus another objective of the seminars is to promote better working relationships between district government and district judicial and law enforcement officers.

Including the police is one of the more important elements of this package. Early fieldwork to develop the programme revealed that Police Commanders and their officers knew virtually nothing about the new laws, which are seen as ‘technical’ and covering civil rather than criminal issues. And like their local government counterparts, police officers also knew very little about the Constitution and fundamental rights. Yet these officers are often the first to become involved in a land-related or hunting conflict, and clearly need to know more about the legal framework regulating these activities. The participation of District Police Chiefs continues to be an

important feature of the seminars, but once the national Police Training Department saw the initial results, they requested a training exercise specifically for more senior level and provincial police officers. This took place towards the end of the current programme.

## **4.5 Targeted sector training**

‘Targeted sector training’ also falls within the ‘second track’ which addresses the institutional context in which the paralegals have to work. The target group are officers from government departments and agencies which deal with conservation and agricultural development, and who must engage with the people who live in rural areas. They include tourism and conservation areas, investment and the wider issue of agricultural and other kinds of investment (for example, open-cast mining) which require access to land occupied by local communities.

The Land Law and related legislation offer instruments and a legal framework that should allow negotiated and mutually-beneficial agreements to be established between the communities and those – including the State in the context of National Parks – who would use their land. Yet research and anecdotal evidence from field visits by the authors underline how weak the understanding is in general amongst staff from the agencies that handle these activities, regarding the correct and effective use of the legal instruments that are available.

### **4.5.1 The Ministry of Tourism**

The Ministry of Tourism (MITUR) is responsible for all National Parks and conservation areas, most of which have communities living inside them with historical rights and long established systems of land use to sustain local livelihoods. The presence of these communities presents the government with a major challenge. In some cases they live within protected areas where human habitation is not allowed by law. In other areas that have been recently declared as Parks or conservation areas, local practices such as hunting and forest extraction go back a long way and have not been illegal until the new park is established. They are then suddenly in conflict with the law, and preventing these activities

instantly undermines local food security and incomes. The introduction of dangerous wildlife also raises obvious concerns about these communities remaining in the newly declared conservation areas.

‘Man-animal’ conflicts are a constant problem even where wildlife has long existed, when elephants and other animals invade local community fields. Then there is the difficult question of illegal hunting and appropriate sanctions imposed on offenders who are often too poor to pay fines and are given prison sentences instead. Many of these questions are covered by the Forest and Wildlife Law and its Regulations as well as by the Land Law, where things like the community consultation and the Local Community concept offer useful ways out of some of the problems encountered. It was a natural extension of the programme therefore to include special courses for the Directorate of Conservation Areas of the MITUR, to explain how the law works in these areas and to look for more imaginative solutions than simply removing people from them. The question of how communities and investors could work together was also emerging as an alternative to the conventional recourse to state-sponsored resettlement schemes, which also generate problems in recipient or host communities.

The target group is senior park and conservation area managers and senior ministry staff. All the seminars take place in a National Park and include fieldwork. A major focus has been the community rights issue, dealing with communities with long historical occupation of land inside. All Mozambican conservation areas face this challenge and the normal response by government is to resettle them outside the park. This is always a complex task, and creates a range of new and intractable problems, including finding land for them to settle on and carry on with their traditional way of life. The courses discuss the rights of these people, and alternative strategies such as integrating local people within the overall objectives of a conservation area. The seminars make full use of important flagship cases indicating that some form of constructive collaboration is possible.<sup>38</sup>

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38 See Calane, 2006 on the early phases of the Covane Community Lodge for example; also the website of the NGO Lupa, <http://www.lupa.org.mz>, which has been supporting this project; also Tanner, 2012 for an account of the Rio Save Safari project in an official hunting reserve in central Mozambique.

Some of the solutions proposed by the CFJJ-FAO team at first appear radical, but like the rest of the programme, the seminars always base their approach on using approved legal instruments to find solutions. A practical case-study approach helps participants to consider alternatives to resettlement, for example by considering the possibility that park residents might participate in tourism revenues in recognition of their long standing rights. Feedback from participants indicates that the seminars give them a new perspective on how to handle the problems they face, and especially where paralegals are also working with local people, there is a greater chance that acceptable compromises can be found.

Following the trend towards more inclusive training in the wider programme, as these seminars developed it was decided to run some of them with district officers' seminars from districts bordering or inside the parks and conservation areas. This brought together very different government teams – those working on conservation issues and those dealing with local government and justice. Having them altogether in the same seminars promoted a common understanding of how to address the complex issues that arise when conservation, economic development and local government coincide.

#### **4.5.2 Training for police in forestry and environment issues**

In response to the positive assessment of the involvement of the police in the district seminars, the Training Department of the Republican Police<sup>39</sup> asked the CFJJ to develop a specific course for senior officers at central and provincial level who were to be given responsibility for policing natural resources and environmental issues. A tailor-made one week course was developed which again included the basics of the Constitution and the fundamental principles of the environmental and natural resources legislation in force today. Once again the question of respecting local rights – such as the right to a pollution-free environment and to not be adversely affected by new economic activities that might affect water and other resources – features prominently in the training. And in common with the rest of the programme, there is a dedicated session on gender and women's rights questions.

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39 Mid Term Review, GCP/MOZ/081/NET.

#### **4.6 Working with the Rural Development Directorate: community-investor partnerships**

Following the success of the first round of paralegal and district officers' training, it was clear that more was needed to ensure greater social and economic impact at community level. To do this, the training and seminar programme was extended to include the DNPDR and agencies working with investment promotion and agricultural projects.

The DNPDR is responsible for supporting district level development planning and implementing the 2007 Rural Development Strategy (RDS). Objective Two of the RDS includes the effective use of land and natural resources for development, and the 'emancipation of communities through the effective implementation of the DUAT' and promoting partnerships between the state, private sector entities, and communities. The training provides DNPDR staff at all levels with a greater understanding of how the DUAT system works and how the Land Law can be used to achieve the emancipation and development objectives of the RDS. It also brings in other government sectors dealing with rural development and environmental issues at a practical level.

As in the district officers' seminars, the focus is on how to use the progressive legal instruments in the land and natural resources laws to achieve concrete social and economic development outputs. The starting point is to understand that the rights acquired by local people over their land and resources also give them a direct stake in how local development is decided and managed. These same rights also translate into a right to negotiate with those who want to use their land and natural resources – the community consultation. There are two objectives here: to promote the investment which is needed to open up local economies and provide both jobs and new economic opportunities for local people; and to ensure that local people gain maximum benefit from investment and development projects which use their land.

The first seminars began with central level National Directorates and senior officers in the Ministry of Planning and Development (MPD), Finance and State Administration (MAE), CEPAGRI of the Ministry of Agriculture, and

the CPI of the MPD. A total of 81 senior officers from these institutions took part (Table 4).

<b>TABLE 4</b>			
<b>DNPDR Central level seminars, 2009</b>			
<b>Seminar</b>	<b>Place</b>	<b>Date</b>	<b>Participants</b>
Central level technical staff (MPD, MAE, etc.)	Quelimane	29 - 31 July	24
Technical staff, Provincial Rural Development Delegations	Maputo City	16 -19 Sept.	35
Sectors promoting investment (CEPAGRI, CPI, ADELs)	Namaacha	12 - 13 Nov.	22
<b>Total</b>			<b>81</b>

*Source: DNPDR*

These seminars were followed by three regional seminars which brought together sector officers, men and women, from provincial and district level, including the Cadastre and Geography Services, Forestry, Tourism, Environmental Coordination, Planning and Development, and District Government Officers. The success of these seminars led the MAE to request a further three regional seminars with a stronger focus on district governments. Overall, 230 officers took part, of whom just 29 (12 percent) were women (Table 5). As with the district seminars, this low participation rate of women reflects the number of women in the sectors dealing with economic and rural development issues, and tendency for the men in most departments to be the ones sent on courses and training.



<b>TABLE 5 DNPDR Regional Seminars, 2010-11</b>		
<b>Seminar</b>	<b>Place</b>	<b>Participants (F)</b>
<b>2010 (Provincial focus)</b>		
Central Region	Chimoio	36 (4)
Southern Region	Inhambane	45 (8)
Northern Region	Lichinga	35 (4)
<b>2011 (District focus)</b>		
Southern Region	Bilene	41 (7)
Central Region	Dondo	40 (1)
Northern Region	Pemba	33 (5)
<b>Total</b>		<b>230 (29)</b>

Source: CFJJ Academic registry

Promoting development and supporting new projects is of course the main function of most of the people working in these sectors. Thus the content is similar to the district officers' seminars but with a stronger focus on the RDS and economic issues and investment, and the link between land management and local development planning. Each seminar therefore includes the following:

- the constitutional context (fundamental rights, concept and role of the State);
- the Rural Development Strategy (Objective 2 and 5, Governance);
- the Land Law (as the basis for participatory processes, community consultation, etc.);
- other natural resources laws and Environmental and Territorial Planning Law;

- Investment Law and regulations for foreign direct investment; and
- how an inclusive and negotiated land management process feeds into district planning.

The seminars help participants to see how a more inclusive and participatory approach to land and resource management and administration can result in economic and social benefits for communities and investors alike. The link to local planning also helps participants to see how public investment in local infrastructure and services can be planned to facilitate new investment and supports community-investor agreements that might be negotiated with the help perhaps of paralegals as well.

A key feature is a session in which they are asked to talk about a real problem or issue in their districts or programmes, and to see how their newly acquired understanding of the laws can modify how they deal with it and perhaps produce a better outcome. In this way the seminars help participants see the law as a working tool instead of just some relatively vague backdrop to their daily working lives – feedback was always about how useful they were for helping them to understand the legal framework and what they can do with various legal instruments it provides.

Many also commented that their superior officers at the highest levels should also receive similar training, as it seems that few of them understand the laws that regulate their sectors and how to use them. One result is that executive staff at the ‘frontline’ are always being asked to do things that are effectively illegal, or go against the spirit of trying to promote a more equitable and inclusive form of development whereby communities, investors and local government all work together. These comments bring to mind the observations made by Maru and his ‘bleak institutional landscape’ which appears to be a significant causal factor in much of the injustice and subsequent problems that local officials have to deal with.

One of the research activities carried out by the CFJJ with FAO support, was a study of community-investor partnerships already established or planned (IFAD, 2008). This study aimed to provide field material to feed back into the training, and also to inform the DNPDR which was in the process of developing a new project to support this kind of collaborative

arrangement between communities and investors. In fact a number of projects had already been established to try and bring investors and communities together, and the research came up with a useful set of typologies and suggestions about how to promote such ventures.<sup>40</sup>

As discussed in Chapter 2, the idea of promoting community-investor partnerships goes back to the 1995 NLP. The community consultation has always been about producing an agreement between communities – as DUAT holders – and investors looking for land. This is not just about the community giving up its land in return for some promised benefits such as jobs or a health post built by the investor. It can – indeed it should – generate economic benefits in return for the investor using community land. This can include the community becoming an active partner with the investor, or a straightforward land lease agreement. Each situation has its own specific circumstances and requires a careful process of negotiation and the development of a detailed contract. The simple ‘Minutes’ (*Acta da Consulta*) which normally result from a *Consulta Comunitária* are in no way sufficient (FAO, 2006).

Very few public officials understand how this kind of process can work, and tend instead to see it as an idealistic fantasy which sounds nice but is not workable in practice. To address this scepticism, the paralegal courses and public sector seminars include concrete examples of this approach.<sup>41</sup> The sessions include discussions of the different types of agreement that might result if communities are properly informed and have legal support, and if investors are encouraged to accept that they must negotiate over more than token gestures when they want land for a project.

During the latter part of the CFJJ-FAO programme the DNPDR went on to develop a new project – *Pro-Parcerias* (pro-partnerships). The FAO team was closely involved in its formulation and subsequently provided limited technical assistance in the context of its other project with DNPDR. The training provided by the CFJJ-FAO team has been an important input,

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40 See also Cotula and Leonard (2010), for accounts of several successful ventures using different business models in various countries; and Spenceley and Hunter (2011) for an overview of inclusive business initiatives in Zimbabwe and Mozambique.

41 There are a few in Mozambique, and more in other countries. See Tanner (2010) and IIED (2008).

creating a more favourable ‘institutional landscape’ for partnerships to be considered as an option by communities and local government alike. There have also been important spin-offs within FAO itself, with lessons learned in Mozambique contributing to the development of new guidelines for agro-industry investment in Sierra Leone that include the use of paralegals and negotiated agreements with local land rights holders (FAO, 2013[b]). More recently back in Mozambique, the CFJJ-FAO programme has been looking at how women with their own land rights can engage with investors in a more active way, and benefit from new opportunities which investment at local level brings, apart from the usual promises of jobs in the new project.

#### **4.7 Gender issues and women’s land rights**

The importance of gender and women’s rights over land has been recognized from the beginning, and since it began in 2006, the CFJJ-FAO programme has included specific sessions on these points. The attention here has been on the more negative aspects of customary practice when it comes to women’s land rights, and given the 1997 Land Law endorsement of customary practice as one way of securing wider local land rights, the gender impact of traditional ‘norms and practices’ raises awkward questions. It is important to remember that if most or all community-held land is lost to investors then there is little to be gained by arguing over how much of it women had access to or how secure their rights were. Discussions must therefore be balanced between these two apparently contradictory aspects of customary land law. A focus on gender can however also reinforce the security of the wider community land right – by helping communities and others to understand the importance of gender equality and to respect the rights of the women who use a lot of the land a community manages, these women will have a stronger say in how community assets are managed and could also prevent the worst excesses of land grabbing which often involve deals between outsiders and (male) community leaders.

Moreover, given the major role that women play in agriculture and household economies, the concern to safeguard their rights has to be seen not only from a human rights and social justice perspective – promoting a

more equitable form of economic development – but also from an economic perspective. Women with secure land rights can invest without fear of dispossession, with all sorts of longer-term benefits for local incomes, and the health and development of their families and communities.

Since it began in 2006 the CFJJ-FAO programme has offered an excellent way of working around these issues. The paralegals are the ones working on the ground with the rural communities, and can tell people about their rights and how to use them, using the local language. Most of them have been working at local level and some come from the community itself. Having the trust of the community already, they are ideally placed to include the question of gender and women’s rights.

It is equally important to get the gender and women’s rights message across to other actors in the local ‘institutional landscape’, and in this case the two-track strategy also comes into play. The programme is again an ideal vehicle for addressing gender and women’s rights issues with local government and other key sector officials whose role it is to promote development and deal with communities and their problems on a day-to-day basis.

As the programme evolved however it became clear that gender and women’s rights required even more attention. A separate ‘Gender and Land Project’<sup>42</sup> was developed to reinforce the main paralegal and district officers’ seminar programme. This project began in 2010 and ended in 2014, with potential for further work in coming years. It has underlined the participation of women as well as men in paralegal training, and worked actively with NGOs, CSOs, grassroots organizations working on land rights and gender issues. More women’s organizations have become partners, with the result that the participation of women in paralegal trainings rose from 18 percent in 2009 to 48 percent in 2013.

The basic objective of the project was to protect and strengthen the land rights which rural women acquire through both customary and other

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42 Project GCP/MOZ/086/NOR, formally designated “Community level legal education and support to help rural women secure and exercise land and resource rights, and address HIV/AIDS related tenure insecurity”. The project is funded by the Kingdom of Norway.

informal local systems. As these rights are acquired through customary norms and practices, they are legally equivalent to DUATs. Other customary norms which threaten to take away these rights and contravene basic constitutional guarantees of equality for women are not recognized (for example, when a deceased husband's family wants to expel his wife from her land). The CFJJ training provides the paralegals with a far stronger understanding of the gender and equality issues in such a context, and gives them a set of tools and back-up support which can help rural women to defend customarily acquired DUATs. The goal is not to help women get formal title documents for their land, but instead to change the way local norms and practices are applied and bring them into line with constitutional and fundamental rights.

Women can of course go further and have their land rights formalized. The paralegal is also able to help with this process, perhaps with the additional support of a local NGOs or programmes like iTC that are working at village level. However, the approach of addressing local land governance norms and practices, and integrating elements of gender equality and justice into the way land is managed by local institutions, is expected to improve tenure security for many more rural women than focusing resources on securing individual titles or taking individual grievances to a formal tribunal. It should also be more cost effective, as individual titling processes are costly in local terms, and take time.<sup>43</sup>

Another feature of this strategy is the need to work with male leaders at local level. Men are the guardians and implementers of traditional land management practices. Rural women nearly always acquire their rights through a relationship with a man, as father, husband, uncle or brother. Customary norms also dictate that it is these men who hold and control the land rights, which women are entitled to use rather than possess. Thus the gender approach is also about men (Box 5), a point that is rarely understood by those who see 'gender projects' as working mainly with women and their needs. Local norms and practices do treat many women unjustly, and these are usually interpreted and managed by conservative male leaders who see their role is preserving customs and traditions which

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43 The recent mid-term evaluation of GCP/MOZ/086/NOR confirmed that this is the correct strategy to follow (FAO, 2012[c]).

are essential to the integrity and moral well-being of their society. If the goal is to change normative customary behaviour and attitudes in order to provide rural women with greater tenure security, paralegals must also work with these men.

**BOX 5**  
**Gender is not just about women**

Given the impact of conservative male thinking in Mozambican society, a feature of the programme is its strong focus on men. They are the leaders and guardians of customs and are the ones who must give up part of their power to promote gender equality. Women tend to want to change and improve their own situations but may initially resist the idea of gender equality because it will upset the balance of daily life. They eventually become interested in these ideas and support them when they realize that some changes to local norms can significantly improve their lives. But men are far more resistant - accepting these ideas means giving up some control and power, and who willingly chooses to do that? While insisting that culture and norms are important, working with men can help them understand how some changes to local norms and practices can bring social and economic advantages. Then everyone will win.

For example, one argument the trainers have found to be very persuasive is that many studies show how gender inequality is linked to high level of malnutrition, infant and child mortality and HIV. These ideas make participants – both men and women – wake up and pay attention. There are also studies indicating that agricultural production in many Sub-Saharan African countries could be increased if women had the same access to agricultural inputs as men (The World Bank, 2005 and FAO, 2011[b]: SOFA, 2010-11).

Also, when the men die, many children become landless – and fathers want to make sure that their children will not be left on the street after their death. Discussing these issues sensitively helps men to understand that if their wives have strong land rights, their children will be protected if something should happen to them. This is a good way to overcome prejudice and preconceptions associated with discussions about gender inequality and women’s empowerment. Men resist these ideas because they think that women’s empowerment means women commanding men. So it is almost more important to work with men than to work with women, to overcome prejudices and convince them to share power more equally in order to improve everyone’s life.

*Source: Author notes and team discussions.*

This point is particularly relevant in a legal framework based fundamentally on the recognition of 'customary norms and practices' as a way of acquiring the DUAT, and which devolves important land management functions to communities using these same norms and practices (see Chapter 2). While the Land Law was a significant achievement in terms of respecting culture and custom and thus securing wider local rights over land, the fact is that women's rights are managed by men and are vulnerable in the customary context. Indeed at the time of the 1996 National Land Conference to discuss the Land Law Bill, women's NGOs and associations raised serious objections to the idea of giving so much power to traditional structures which they feared would undermine women's rights still further.<sup>44</sup> In spite of the constitutional safeguards that were added, much more is needed in practice, and it was clear that measures would be necessary to directly deal with how local customs affect women's rights.

It is of course equally true that few rural women are aware either of the legal protection they enjoy under the law, or that they can request a formal DUAT title in their own names (although this does require a form of community consultation where men are likely to predominate). A secondary objective is to show women how to secure their land rights if they want to, using these legal options, and to use them in practical ways to sustain food security and generate new income.

#### **4.7.1 Gender and women's rights in the training activities**

A new gender component was developed under the last project at the CFJJ. This component had separate modules on fundamental rights and the concept of gender, and on the specific issue of women's land rights. It detailed how the 1997 Land Law and other laws provide women with full protection and the means to formalize their rights if they want to. Paralegals returning to their communities were also expected to carry out community meetings to discuss women's rights and the broader theme of gender equality.

Gender and women's rights issues were also reinforced in the district seminars and sector work, with interactive discussions included in the

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44 Author notes from the 1996 Conference.



programme. Working together with district administrators, judges, prosecutors, and police chiefs is especially important in the gender context, as these officers are very often the 'front line' not just in land and resources issues, but also when dealing with issues of gender discrimination and violence. Few of them have any real knowledge of the underlying constitutional and human rights arguments in favour of respecting and protecting women's and children's rights. More specific issues such as land dispossession affecting women are also poorly understood and confronted at this level, and are often seen as local issues dealt with by cultural structures that are scarcely ever questioned.

The discussions on gender and women's rights are always extremely dynamic in both the paralegal courses and in the district seminars. They often reveal deeply-held prejudices even amongst senior officials and some judges. Many quite senior officials hold very conservative views on gender and the roles and rights of women, and need to change their understanding in a fundamental way if they are to give support to the paralegals who are working on the ground, and who need the support of the local government officials (Box 6).

Through these courses new concepts have been transmitted to different parts of Mozambican society, challenging traditional views of women and providing different solutions to long-standing problems. For example, a critical issue relating to women and land is the dispossession of widows and their children of their lands. Few people know that this is crime, punishable by a term in gaol. Article 29 of the Law on Domestic Violence against Women (N°29/2009) states that it is a crime to dispossess a widow after her husband or partner dies, and even judges, prosecutors, police and civil society are often surprised to find out that this is statutory law in Mozambique. Very often the dispossession of a widow is seen as a family matter, outside of the bounds of the law. And in some sessions, even senior judges have said that local custom should prevail as it is 'our culture', even if they realize that this clashes with fundamental legal principles.

### BOX 6 Overcoming prejudice

Discussions on gender issues normally lead to heated and sometimes controversial debates during the CFJJ-FAO paralegal courses and district seminars. One example is a discussion during a district seminar held in 2011, in Lichinga, Niassa Province. The seminar was discussing gender issues and entire Mozambican legislation which underpins equality between men and women. Besides the Constitution and the Land Law, which are the main focus of the seminar, there are the laws on Domestic Violence against Women the Family Law, and Inheritance and Succession. Most of the participants of both sexes agreed that men and women should be treated as equals, with equal rights, duties and opportunities. Then, one of the participants expressed a fairly radical opinion, saying "I don't think men and women should be treated as equals; women have a lot of disadvantages because they are always pregnant... And who should carry out their work when they are pregnant? They are a burden. Therefore, they should not have equal rights to men, because as men are more productive and work harder than women. These ideas of equality do not belong here, they are foreign ideas. This is Africa, here it does not work like that, and that is not our culture".

These remarks provoked a heated response, with both the women and other men present expressing outrage. They were the first ones to point out that the opinion of their colleague was totally flawed, for obvious reasons that were widely expanded on during the debate. One trainee said that this way of thinking was not only absurd, in her view, but also contradictory towards all the Mozambican legislation studied during the training. Particularly the Constitution, which is "African and Mozambican and a great instrument for the protection of equity and equality of rights among all citizens, especially men and women" she concluded.

It is remarkable that these outdated or extreme ideas persist, especially amongst government officers in responsible positions (the person who had made the initial remark was a District Administrator). He was certainly not uneducated, and was not someone who lived in isolation in some remote rural area without contact with the contemporary world. His position reveals the extent of conservative opinion, rooted in a belief that local cultural norms are under threat. But exposed to such debate in a group of colleagues of equal rank and status, backed up by solid legal arguments rooted in the Constitution and other national laws, a change in attitudes can be achieved. With such change, the work of the paralegal is easier, and the objective of a more equitable form of development becomes a practical reality.

*Source: Author notes.*

The hope is that this active exposure to the whole question of gender and women's rights will sow the seeds of a shift in attitude and the better treatment of women in general amongst key 'frontline' staff in local government and judicial offices. These are the people who operate the 'institutional landscape' within which injustice takes place and is perpetuated. By changing their attitudes, and bringing in more follow-up support to paralegals working to empower local people who then begin to demand more of their local officials, it is possible to improve how the rights of women are addressed, and reduce or eliminate injustice even in the absence of major institutional reform.

#### 4.7.2 Advocacy campaign

In addition to the training and field activities, the CFJJ-FAO programme also raised awareness of the rights of women over land and of gender equality through a national advocacy campaign. A series of materials such as T-shirts, *'capulanas'* (traditional women's clothes), posters, calendars, brochures, flyers, videos<sup>45</sup>, and other media have been prepared to spread information all over the country. The messages spread through the advocacy campaign were geared not only to empower women to learn about and exercise their rights, but also to appeal to men's sensibilities.<sup>46</sup>

The materials were shared not just during the training events, but are also distributed among NGOs, CSOs and public institutions, as well as in the rural areas where community meetings were carried out. The materials and the messages were used to encourage discussions between people in the rural communities during the field exercises, where the paralegals encourage men and women to reflect on the advantages of considering these new concepts as ways to promote local development through social justice.

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45 See the video at <http://www.youtube.com/watch?v=sDoBZamFvVc>, which gives an excellent overview of the whole programme.

46 Core messages identified to promote rural community land rights and foster gender equality are: "The Land Law protects communities' rights", "Women and children have inheritance rights", "Working in equality between men and women fosters community development", "Men and women have equal rights to land and natural resources".

## 4.8 Research

Since 2006, the programme has continued to support research with two broad themes:

- to consolidate the earlier work on conflicts, and continue to identify new and ongoing conflicts as case studies that could then feed back into the training programme;<sup>47</sup> and
- to better understand decisions issued by both formal tribunals and customary courts at the village level, specifically in relation to women and children's rights in general and especially decisions concerning control over and inheritance of land.

The aim of the case study research has been to carry on looking for a better understanding of the problems and the roles of the various actors, and to then identify ways of arriving at consensual solutions. In the case of women's rights, it has been important to understand how local judges arrive at their decisions, and thus decide how best to work with these local dispute-resolution bodies – how to sensitize them about the laws and shift their conceptions of justice and gender equity.

At a general level the case studies reveal widespread misapplication of the Land Law and other laws that regulate natural resources, with a generalized lack of respect for the legal rights of ordinary people, both as holders of DUATs by occupation and as citizens with fundamental constitutional rights. There are several cases of open abuse of rights and blatantly setting the Land Law aside, where officials have to respond to pressures from higher up and ensure that land is found for investors without problems.<sup>48</sup> With regard to women, the data show that most decisions concerning women's and children's land rights are addressed at community level by customary courts, where male elders take decisions entirely on the basis of prevailing local customs and practice. They have little if any knowledge of the formal law regarding the rights of women, and see it is something

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47 This also involved developing an MS Access database for the conflicts that were identified. This material is held by the Department of Studies and Research and managed by the Documentation Department; it is accessible through application to the CFJJ.

48 CFJJ Conflict Database; FAO, 2004[b]; see Mario, 2013 for a very recent example.

‘external’ and foreign when they do know something about it. Specific cases do however show how participation in the CFJJ-FAO programme can have a transforming effect, making them far more aware of the underlying injustice of how women are dealt with at local level, and more aware of the constitutional and wider moral context when they apply customary rules (Box 7).

The FAO projects also supported the larger CFJJ programme that trains people to become judges and prosecutors. Gender sensitive materials were mainstreamed into their courses, thereby making gender training part of their ‘normal’ professional education.

The Department of Studies and Research (DES) of the CFJJ also carried out *ad hoc* research into specific themes. The first of these was a research study into the impact of HIV-AIDS on land rights for women and their participation in land management decisions (Seuane, 2007). This research clearly showed how HIV-AIDS was placing younger women with children into a situation where there were in effect no customary norms available to safeguard their interests (in a more normal context later in life, a widow can rely on their sons securing the land they use, or other practices such as the levirate (formally marrying a brother-in-law who would extend protection including land rights). In the HIV-AIDS context when the male land rights holder dies much earlier, a range of quite spurious ‘cultural norms’ are invoked that result in the young widow being dispossessed of her land and possibly also losing her children as well. This work substantially prepared the way for the later strengthening of gender and women’s rights issues in the programme.

A second line of research has looked at how paralegals work in other countries in the region. A specific concern has been the lack of legal recognition for paralegals in Mozambique, and in order to understand this more clearly the DES carried out a series of visits to neighbouring countries. The results of this work have also been useful to assess the issues of certification and regulation, which is discussed in more detail below.

**BOX 7****Women's rights and social justice in customary courts**

Samuel Manuel Guamba is a community leader and customary judge in Zavala District, Inhambane Province. In November 2010, he participated in a paralegal training course promoted by CFJJ and the Land and Gender Project. Through the training he gained knowledge regarding the most relevant legislation on land and natal resources rights. He was also sensitized on the importance of gender equality for social and economic development and learned about gender issues and women's rights.

In 2012, he received a not uncommon case in his local customary court. A widow and her children had been evicted after the death of her husband. Samuel explains that the deceased had lived for eight years with his first wife, having seven children with her. The couple split and sometime later the deceased met his second wife, with whom he had four children. During their time together, the couple acquired some land and built and equipped a house. In their back yard they cultivated crops to feed the family. The surplus was sold by his wife in the local market and the income was used to support the family.

After ten years of marriage to his second wife the husband died. A few days after the funeral, the adult children from the first marriage and some of the deceased's relatives tried to evict the widow and her small children, claiming that according to tradition, the property left by the deceased should be given to his relatives. Samuel recalls that he called a meeting with the husband's family and explained to them that, according to Mozambican statutory law - especially the Constitution, the Land Law and the Family Law - the widow and her children were the ones who had legal rights to the land and the house jointly built during that marriage. "When they saw the books (legislation) they finally accepted that these are the only rules now; and these rules are good for everyone in the community. Otherwise, what would have happened to that widow with her small children? They would have been left with nothing. And without land, without shelter, how could they have survived? From then on, everybody in our community knows that widows are no longer evicted" concludes Samuel.

*Source: Author notes.*

## 4.9 Impact of the programme

The impact of the CFJJ-FAO programme can be assessed both in terms of the quality and impact of the training on participants, and the impact of the programme on the ground, amongst its target groups. There have been several reviews over the years, including mid-term evaluations of the three projects (FAO, 2007[a], 2011[c], 2012[b]), a validation of the Terminal Report of the Gender and Land project (FAO, 2014) and an Impact Study carried out in 2012 by an independent evaluation firm (EUROSIS, 2012). Together, these provide a positive picture of how the programme has created a sound base and methodology for both empowering local people and promoting a constructive and participatory development process using the available legal instruments. Some questions are raised however about the effectiveness of the programme on the ground at community level.

### 4.9.1 Impact at community level

On the community side, the CFJJ-FAO programme has educated local people and their leaders about their individual and collective rights over land and natural resources, and given them the tools they needed to defend them when necessary. It has reached right down to village level, across the country. With some 4-5 communities visited in each course, and with 38 courses carried out, legal and development professionals from a central level institution, and the paralegals they have trained, have taken their message down to village level in over 150 communities across the country. On some of these occasions, they are also accompanied by district or even provincial judges and prosecutors. For many communities and ordinary villagers, it is a remarkable thing to have a *'doutor'* trainer or a judge in their village talking to them about their rights in this way. This must count as one of the more outstanding features of the programme.

The available evidence suggests however that the presence of a CFJJ-trained paralegal does not always have a significant impact on how community members' understand and exercise their rights (EUROSIS, 2012: section 5.2). This does not mean that 'paralegalism' is the wrong strategy or that the paralegal training programme has failed in its objectives. What

happens next is vital to ensure that the programme achieves its potential for empowering people and raising their awareness of their rights and how to use and defend them.

A key weakness was the question of providing adequate follow-up and technical support to the paralegals. As the EUROSIS study observes, in the original project design, CFJJ staff were meant to accompany paralegals at community meetings and give technical support. In practice this proved difficult for capacity reasons and, perhaps more importantly, because of concerns over the mandate and role of the CFJJ.

The capacity problem is simple – senior CFJJ staff are all involved in the core training programme for judges and public prosecutors, and also have research and academic roles with other higher-education institutions. Finding the time to carry out fieldwork on top of the time already spent on paralegal courses in distant parts of the country has been a constant challenge. However, the CFJJ also became increasingly concerned that providing technical support to paralegals in community meetings could be seen as advocacy work and contravene its mandate as a Government and judicial training institution. Indeed some training activities at community level were questioned by district administrators who thought that the CFJJ was engaging in some kind of community activism.<sup>49</sup> There is a real risk that both the paralegal and whoever supports him or her will be accused of activities seen by the authorities as illegal or against State interests (Box 8).

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49 Author notes and case study research programme.



**BOX 8**  
**Agitation and subversion – how legal support is seen by some local authorities**

The far north of Mozambique is currently experiencing a wave of large scale investment, driven by newly discovered reserves of natural gas and oil. Multinational firms with Government licenses are developing a new industrial hub in an area of outstanding natural beauty and close to a marine national park. The oil and gas firms need large areas of land on the coast to build processing and shipping infrastructure. The prospect of money to be made serving this new industrial hub has attracted national entrepreneurs looking for land to start up a range of support projects. Demand for land has soared, and local people are being treated with minimal concern for their rights both as DUAT holders and as citizens.

Apart from obvious conservation concerns, local communities have also lived in the area for generations, living from small scale agriculture and fishing. Whether it is the companies or the government who are abusing local rights, it is clear that the local population knows very little about their rights under law and what they can do to defend them. Confronted by powerful interests, they have had no legal support until some paralegals were trained and took up their cause. The NGO CTV also sent its Director, a well-known environmental lawyer and defender of community-rights, to give professional support for the paralegals working at community level and with the authorities. The objective has been either to help communities resist unjust expulsion from their land, or to at least secure adequate and substantial compensation, in line with the value of investment and likely returns expected.

The paralegals and the CTV director have been accused by local public officials of stirring up an otherwise 'cooperative' population. The Director was also apprehended by local police shortly before she was due to leave the area, and subjected to an interrogation about her activities.

The case illustrates how paralegals can raise awareness of rights at local level, and work alongside communities as they confront more powerful forces who want their land. But it also shows how this kind of work is still seen as subversive and illegal, by those who defend the notion that state 'ownership' of land gives the state and its favoured partners the right to over-rule local rights, on the grounds that such action is in the national interest and necessary for development.

*Source: Personal communication with Alda Salamão, CTV Director, and Mario, 2013; Savana newspaper, 11 October 2013.*

On several occasions CFJJ trainers have found themselves in similarly delicate situations, with district administrators complaining about their activities. Some have struggled to maintain impartiality while being pressed to become directly involved with specific cases on the ground. It is one thing for an NGO to be in this situation, quite another for a high-profile judicial training centre. In fact over the years, the CFJJ has had to carefully avoid jeopardising its impartiality and exposing itself to accusations of 'activism' and taking sides with communities against other interests.

Another factor affecting impact on the ground is the material situation of the paralegals themselves. Because they were sent to the CFJJ courses by NGOs, it was assumed that when they returned to work, they would get logistical and material support for their new paralegal activities. In fact very few were lucky enough to be in organizations that could support their work - most CBOs do not have the financial or transport resources to support the regular visits to villages and communities and follow-up meetings that are essential for achieving the full potential of paralegal work. Indeed the biggest issue faced by the paralegals and reported in every course and follow-up meeting has been the lack of funds for transport, accommodation and food to work at community level.

To address these concerns the Gender and Land Project decided to work with NGOs which could take on this follow-up and support role with FAO project funding (Box 9). After their training, more attention was given to ensuring that the paralegals were able to do community training and raise awareness on community land rights, the rights of women and children, and gender equality. Refresher training was given for selected paralegals to lead the community meetings (see Chapter 4.3.2), and the project provided material support for community-level work. This strategy also overcame some of the mandate issues, as technical and advocacy material developed by the CFJJ-FAO programme was used but without the direct involvement of CFJJ staff.

**BOX 9**  
**Working with NGOs to provide follow-up**

To ensure that legal education really did reach the rural communities, FAO made agreements with two national NGOs – *Centro Terra Viva* and *Associação das Mulheres Desfavorecidas na Indústria Açucareira* (AMUDEIA) – to support community meetings led by CFJJ-trained paralegals. Meetings took place in 545 communities in Maputo, Gaza, Inhambane, Manica, Sofala and Zambezia Provinces. The paralegals used their training to inform the villagers about their rights under the law and how to address injustices rooted in customary practices which might be prejudicial to women. For many villagers it was their first contact with statutory Mozambican law.

The agreement with AMUDEIA enabled paralegals to attend meetings in areas where they already worked but could not visit regularly due to lack of transport and other support. It also covered exchange visits with other paralegals working on land and natural resources and gender and women's rights in Sofala Province. Technical and advocacy campaign materials were provided by the project, with field support from FAO project staff in both Maputo and Sofala Provinces.

The CTV agreement also included field support for meetings and other training activities. Together with the CFJJ-FAO team, a refresher course – 'Paralegal Training Level II' – was given for the best paralegals (those who had performed best in the CFJJ course). This three-day workshop enabled much deeper discussion of sensitive and more complex issues. The paralegals were also shown how to organize and conduct community meetings.

After the refresher training, the paralegals were free to decide if they wanted to do a community meeting – all gladly accepted. Technical assistance contracts were signed between the paralegals and CTV, for each paralegal to carry out two community meetings within three months of the training. The CTV-FAO team provided technical support in some meetings, and a free-call landline was also set up for paralegals who needed further support.

*Source: Author notes.*

By ensuring that the field side of the paralegal equation is provided for, it is also possible to scale-up results. A single trained paralegal can reach and transmit the new knowledge acquired during the training session to several communities, reaching hundreds of people in the most remote areas of Mozambique. Rural people can then finally embark on the journey

towards legal empowerment and secure tenure rights. The success of this strategy highlights the potential of the programme to educate people about their rights and to seed a process of change with profound implications for land governance and management.

Interviews conducted more recently with leading NGOs and activists confirm that where the CFJJ paralegals get support and are part of 'an advocacy organization', their impact has been substantial. This is also confirmed in the 2012 impact study (EUROSIS, 2012:Meetings) with three long term NGO partners, two of which had been involved in the first pilot training and developing the theatre group methodology, confirm that both in the local communities and in the district governments, the role of 'their' paralegals is much appreciated and has a great impact on the *reduction of conflict* between the communities and other stakeholders.<sup>50</sup>

#### **4.9.2 Gender impact**

It will take a long time to change entrenched and culturally-determined attitudes towards gender equality and the rights of women. It is therefore difficult to assess 'impact' of the CFJJ-FAO programme in this complex area. The paralegal courses and the government and judicial officer seminars underline the scale of the challenge, with conservative and unbending attitudes evident even at the level of District Administrators, judges and prosecutors. This is confirmed by the 2012 evaluation which observes that 'the theme [gender] is relevant for public functionaries because many of them, in spite of government [gender] policies over many years, have still not sufficiently internalized the concept of gender equality' (EUROSIS, 2012:60). The same study goes on to say however that 'Although it is difficult to change attitudes rooted in a long tradition of gender inequality, it is possible to note that the message [of the programme] is being heard, and that men and women are beginning to consider and ask themselves about the rights of widows and the question of domestic violence' (ibid:62).

Anecdotal evidence collected during field visits underlines this point very well (Box 10). It is clear that the overall CFJJ-FAO package, with its strong

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50 Interviews in March 2013 with senior staff and paralegals from the NGOs Kutsembe, Lupa and AMUDEIA, attended in some cases by local government officers.

focus on both gender equality and on the land rights of women, is indeed a powerful tool for promoting legal education of rural communities, and addressing the issue of gender equality.

**BOX 10**  
**'Only men are worthy of having rights'**

Inocência Xerindza is a peasant who lives in a peri-urban area in southern Mozambique. In 2010, she participated in a paralegal training course, and for the first time learned about Mozambique's formal legal system. Until then, the only legal system she knew was the customary (or traditional) system. In this system, all the laws, rules and standards of conduct are established through the customs and norms prevalent in her area. It is mainly patriarchal and tends to be very negative in terms of women's rights. Men are generally the 'head' of the households and manage resources and make all the important decisions.

During a monitoring visit a few months after the paralegal course, Inocência explained that things were changing where she lives.

"I really enjoyed the training, because I learned that women also have rights. Before the course, I thought only men were 'worthy' of having rights", explained Inocência in a humble way. "When I came back (from the training) I told my friends and everyone in our community that women also have rights, and that no one can evict us if we lose our husbands or get divorced or separated; land and houses should be shared and men and women should have equal rights."

Inocência said that after passing her new knowledge onto other people – men as well as women – in the communities where she works as a paralegal, the women no longer passively accept being oppressed or evicted if they divorce or their husbands die. And the men are starting to understand and recognize women's rights, which until recently were simply ignored.

*Source: Author notes.*

Meanwhile the programme is already having a practical impact on individuals – men and women – who want to go further to secure their land right with the support of a CFJJ-trained paralegal. Although the CFJJ-FAO programme is not about obtaining DUAT documents, CFJJ-trained paralegals have used their new skills and knowledge to work with women's' associations to secure titles for their members when this has

been the best course of action to follow (Box 11). The practical outcome may be small - three DUAT title documents – but it does demonstrate that the training provided by the CFJJ-FAO programme helps rural women – and the men who still lead their communities – to understand their equal rights as women, and to defend them. By setting an example the titling process can also feed back into the process of promoting greater awareness of women’s land rights. Together with the focus on promoting normative change at local level, this example shows how the project is beginning to have impacts at various levels. The programme is seeding the social changes that will lead to gender equality in Mozambique, and more equitable access to land and natural resources for all.

#### **BOX 11**

##### **Building from the base toward normative change**

When they returned to their communities after a paralegal training carried out in October 2010, a group of 11 paralegals (8 women and 3 men) from AMUDEIA, a grassroots NGO, held community sessions to tell rural people about their land rights. The core strategy of the training was to give legal education and information on women’s rights to the entire community – men and women – and thus initiate changes in attitudes and customary norms in relation to gender equality and rights.

Independently of the CFJJ-FAO programme, but in response to the lessons learned in the training, individual women at risk of losing their lands due to discriminatory traditional practices, sought help to secure title documents for their land. With a small grant from the national NGO Forum Mulher, each paralegal took on the case of three women, and embarked upon the complex process to formalize their land rights. After a few months, in July 2011, the first land titles were issued to three of these women.

Identifying those most at risk or in conflict with traditional ways of doing things is a key concern of the programme. Two of the women who received land titles were widows being pressured to leave their land by their husband’s relatives. The third had been abandoned by the husband many years previously and had to take care of their children by herself. She was worried that she could be forced to leave her land because she did not have any men to ‘defend’ her.

*Source: author notes and mid-term evaluation reports (FAO, 2011(c), 20yy, 20zz).*

### **4.9.3 Local government and agency impact**

On the local government and implementing agency side of the programme, things are much clearer in terms of the impact of the programme on its target group. In spite of the implementation issues discussed above, it is clear that the training-plus-institutional capacity-development approach has had considerable impact. Significantly, the impact study found that ‘the quality of the work of the NGOs benefits from the involvement of people who participated in the capacity building actions promoted within the scope of the [programme]’ (EUROSIS, 2012:Executive Summary, emphasis added), referring to the local government, judicial and law enforcement officials who took part in the district seminars and sector training.

Most importantly in terms of the legal empowerment and inclusive development themes that have always run through FAO's land work in Mozambique, the CFJJ programme has created ‘conditions for interaction between Government sectors and between the Government and civil society’ (ibid). To quote the impact study, the programme ‘had a positive impact on the quality of governance and contributed to a better knowledge of communities’ rights and those of men and women in relation to natural resources and women’s rights’, and has contributed to ‘an inclusive and participatory development process, through increased knowledge of natural resources rights at community level and to an improvement in the quality of services provided by the Government’ (ibid).

It is also clear that in many parts of Mozambique, local governments are coming to appreciate the way in which paralegals can assist with complex issues arising from new commercial projects that seek to use local land or establish outgrowing or other forms of partnerships with local producers. This was made very clear in the recent National Conference of Paralegals held in Maputo in December 2013, when participants talked of cases such as a District Administrator, embroiled in a dispute with communities over land and new investment projects, calling upon the paralegal working in the area to help resolve the issue and move forward.<sup>51</sup>

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51 Sergio Baleira, personal communications.

This is precisely the rationale behind the 'twin-track' approach, addressing the institutional landscape at the same time as legal support and civic education is provided to communities through NGO paralegals. The programme has therefore established an important methodology for empowering local people and creating the conditions for a more equitable and participatory just form of investment-led rural development. It has initiated a change of attitude and instilled a new understanding of inclusive and participatory development amongst local government and judicial officers; and contributed fundamentally to keeping the issue of local rights and democratic governance of land and resources alive at a time when all other trends are to over-ride rights and fast-track new investment (ibid). This is also clear in national seminars on land issues where district administrators who been through the CFJJ training show a marked difference to those who have not, in terms of their understanding of the law and community issues.<sup>52</sup>

#### **4.10 An effective programme needing an implementation framework**

The CFJJ-FAO has achieved impressive results in terms of training large numbers of paralegals and institutional actors, and has established the CFJJ as a paralegal as well as judicial training institution, within the context of its secondary mandate to promote access to justice. It has developed and implemented an effective training package with good materials, and the CFJJ has become an authority in the area of environmental legislation and local rights. It is established as an actor in policy debates at the highest levels of government.

By reaching out to other important institutional actors, the programme has also raised awareness of the potential of the legal and policy framework to provide innovative solutions to complex issues. While the 'institutional landscape' remains in need of reform, local government officers are more aware of how they can use the instruments provided in the various laws to promote a more inclusive form of development. Consultation and

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52 This was noted by several observers at the National Meeting on Community Land Delimitation in Nampula, March 2010, at which one of the authors was also present.



negotiation are encouraged, replacing or at least minimizing the inherent risk of confrontation when investors seek out local land for their projects. Tourism operators begin to think about local people as stakeholders with historical rights over areas where projects are planned or where parks are planned; private sector agricultural and forestry projects are encouraged to see communities as partners instead of obstacles that have to be dealt with and then set aside.

This is particularly important at a time when government commitment to the community elements of the legal framework has been haphazard and often almost contradictory. With a policy and legal framework established for the democratic and equitable governance of land and resources, the focus instead has been on fast-tracking investors onto land where community-held DUATs plainly exist but are frequently overlooked or set aside.<sup>53</sup> The role of the paralegal is clear in this context, not just in conflict resolution but as an actor who can facilitate understanding and dialogue and mediate between very different interest groups who want to occupy and use land.

The CFJJ-trained paralegal has much to offer in these cases, working with communities to advise them about their rights, and to support negotiations between them and those who would use their land and resources. Their impact on the ground is less clear however, but there is a great deal of anecdotal evidence and feedback from organizations that indicates that a positive and dynamic process of empowerment has been set in motion with CFJJ-trained paralegals at its heart.

#### **4.11 Having a ‘champion’ in a complex area of work**

Finally it has to be recognized that the CFJJ-FAO programme underlines the importance of having a recognized ‘champion’ to work within the sensitive area of land and related issues. Working with the Centre for Juridical and Judicial Training in Matola, Maputo Province has indeed proved to be a constructive and innovative way for FAO to contribute to long term food

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53 Author notes; CFJJ case study research; anecdotal evidence from many NGO partners; see also CTC Consulting, 2003 and Calengo et al, 2007; and most recently, the case reported in Mario, 2013.

security objectives. Selecting a good counterpart institution was a critical first step. In this context there were several issues to consider:

- experience and profile of the counterpart institution;
- government or non-government;
- existing capacity and potential for development;
- commitment; and
- independence.

The programme has been running at a time when local rights have become increasingly vulnerable in the context of surging private sector demand for land, and where government has been keen to give underused land to investors who are perceived to be more capable of putting it into production. With growing concerns being voiced over 'land grabbing' in many African countries<sup>54</sup>, adopting a rights-based approach is an essential element in any package which aims to resist or at least influence the way this new demand for land is managed. In area of law and social practice which is often highly contested, have a high profile public institution like the CFJJ to defend the legitimacy of what is being taught and disseminated by the paralegals and CFJJ trainers in the seminars.

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54 See Sussex Conference website for an excellent collection of papers documenting this kind of process around the world. Also Anseeuw et al, 2012.

## **5. Discussion**

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Much of the work of the CFJJ-FAO programme has been about maintaining a focus on the rights-based and progressive elements of the policy and legal framework for land and natural resources in Mozambique. The paralegals trained by the CFJJ-FAO programme clearly have an important challenge helping local people deal with the injustice caused by the institutional landscape surrounding them. It is this landscape and the government and other staff who work within it that are facilitating and administering the current demand for land by investors in a way which ignores or sets aside considerations of human rights and long held customary rights over land. This is not to argue against private investment and a role for the State in promoting it. New investment injects capital and creates new opportunities to diversify and enhance rural livelihoods, especially for rural women whose rights under customary law are often circumspect and vulnerable. Ultimately, it is about how these things happen. It is a question of governance and how we empower people to engage with and influence those who govern and administer their lives.

Thus the work of the paralegal in Mozambique (and other parts of Africa) is both reactive and proactive. As well as resolving conflicts, they must advise, support, and mediate. They must tell people about their rights and how to use them in practice, not only to protect their livelihoods but also to achieve their own social and economic development goals. In this way the paralegals take on a strong role in the wider rural and social development process. And by empowering local people and giving the tools and knowledge that have long been denied them – about their rights, about how to use lawyers and courts, about how to deal with corruption and obscure government decisions – they are seeding a process of change from the bottom-up that will, eventually, achieve the kind of ‘landscape reform’ that will significantly reduce or even end land and resource-based injustice in the future.

## **5.1 Lessons for paralegalism**

Referring back to the list that summarises the discussion in Chapter 3, it is possible to confirm and reinforce most of the points made about paralegals in Africa, and learn from some of the weaknesses of the approach adopted by the CFJJ-FAO programme.

### **5.1.1 The case for specialization**

The discussion above makes a good case for creating a cadre of paralegals who specialize in land and natural resources. In most African countries the majority of the population is rural and their rights over land are an essential part of their livelihoods, food security, and status in society. Where these rights are threatened and lost, food insecurity and suffering are bound to follow.

This type of injustice is mainly linked to the way local land rights are treated by the outsider – investor or state, often both working together. Pressure on land is growing everywhere, driven by population growth and the demand for large areas of land by investors who want to produce food or biofuel for international markets, or use land for plantation forestry and eco-tourism. Climate change will exacerbate this in many places, as land becomes degraded and rainfall patterns change. Wherever investors want land there will nearly always be local occupation and use; conflict appears inevitable but can be avoided with good management and effective mediation.

Even where the risk of conflict and impacts on local food security are understood, the response from government land management institutions is often top-down and not particularly responsive to local needs. Communities need to more proactive, to protest and stand up for their rights and even take direct action if necessary. But direct action also risks causing violence and repression. Local people taking the law into their own hands often carry out acts like burning plantation trees which are then dealt with in the criminal law and not the land law context. The 2004 CFJJ study found that police and prosecutors only get involved in land issues when a criminal act has been committed. The criminal activity by the

community is then dealt with by the court while the underlying injustice linked to abuse of the Land Law is left simmering away.

In these situations local people need help and guidance not just to defend their rights, but to use them proactively to achieve concrete development objectives. With support from paralegals it is possible to come up with workable solutions that meet the needs of both sides, that get land into production, contribute to growth, and have the maximum impact on local livelihoods and food security.

Community level paralegals can provide essential educational and mediation support in these contexts, especially if they have specialist training in the land and natural resources laws that regulate land use and access in their countries. They should of course also still be trained in basic governance and constitutional principles, and know how to call upon professional support to consider litigation or other forms of action when necessary.

### **5.1.2 Training**

The programme has developed an effective methodology with a good mix of classroom, fieldwork, and interactive methodologies. The training is judged to be of good quality, and has helped participants to better understand and work on land and natural resources and gender issues (FAO, 2011[c], 2012[b], 2014; Eurosis, 2012). All of these points are supported by the fact that both the iTC and the MCA programmes, and key NGOs like CTV, have adopted the paralegal methodology and partnered with the CFJJ to train their own field personnel, who then go back to work as paralegals and activists in their own programmes. All this adds up to a useful model for similar paralegal programmes elsewhere to follow; and a longer term sustainable capacity at the CFJJ to carry on with and develop paralegal training and consolidate its reputation and role in disseminating and discussing issues related to natural resources rights.

The general impression gained from both the end-of-project impact assessment and anecdotal evidence is that the training package developed by the CFJJ is effective and appropriate for the purpose intended (paralegals

specializing in a specific area of work), and is well aligned with the social and political issues it addresses. That said, it is also the case that the range and sheer volume of legislation is growing all the time, and the CFJJ will have to think carefully about how to structure its courses in the future and maintain a high quality standard.

Set against the 'arrow chart' shown in Figure 1 on page 44 the CFJJ-FAO programme would sit more to the right and lower down, a balance between the need to provide paralegals with a good grounding in the main laws relevant to land and natural resources, and the need to have basic but quality legal support available at village level. The mix of classroom and fieldwork activities is an excellent way of getting this point across to the trainees, and giving them a real sense of the kind of work they will be engaged in when they finish the course. The focus on gender issues and the way the paralegals are trained to address them is also a good way to prevent and discourage traditional discriminatory practices against women such as land dispossession.

### **5.1.3 Recognition and certification**

The current status of the paralegal movement in Mozambique was admirably demonstrated by the lively and engaging National Conference that took place in December 2013. Several provincial level associations have been set up, largely driven by a desire amongst the paralegals themselves to 'professionalize' their work and to give themselves a degree of institutional protection in an area of work which everyone freely admits is challenging and sometimes risky. There is a strong feeling that legal recognition is necessary, and that this will facilitate their work even further.

Meanwhile it is evident that the Certificate awarded by the CFJJ is a critically important document for all the paralegals trained in the CFJJ-FAO programme. The EUROSIS evaluation of the programme underlines how it has been effective in providing recognized accreditation. The CFJJ is a reputable institution and its status as a public body responsible for training the national judiciary gives the Certificates that paralegals receive a level of respectability that an NGO-provided certificate would not. This does not yet require a legal statute to continue. Indeed it is a solid argument for maintaining a training programme that is at least endorsed

and supervised technically by a reputable and high-profile entity such as the CFJJ. Perhaps in the future a new National Association of Paralegals can assume that role, but until it does, it is important to base the legitimacy of what paralegals do in the kind of recognition and legal authority that the CFJJ is able to provide.

It is interesting in this context to reflect on what Maru calls the 'colour of law' and the 'awe of the law' which Timap paralegals in Sierra Leone are able to exploit. Having a link to a serious training institution like the CFJJ, invokes this 'awe' and paralegals are able to use the fact of the law itself as the ultimate certification backing up what they do on the ground.

At the end of the day however it is the effectiveness and usefulness of paralegals that will give them the recognition they aspire to. This is already happening in Mozambique, as it has done in Sierra Leone and other places. CFJJ-FAO trained paralegals are out there doing a good job, responding to real needs. This ranges from NGOs that are successfully pursuing grievances through the courts and winning, to local governments that are calling upon paralegals to help them resolve land and other disputes. The women paralegals who, on their own volition, are helping other women in their communities to get land rights titles in their own names are another excellent and highly visible example. And amongst men in the communities, there are signs that the work of the paralegals is changing attitudes, and beginning to impact on the normative framework that until now has been prejudicial and undermining of the rights of women over the land they occupy and farm.

#### **5.1.4 Working in networks**

The evident weak point of the CFJJ-FAO programme is that it is not a paralegal programme. It is a training programme for paralegals which assumes that the people it trains will then go back out to their organizations and communities and practice what they have learned. Experience has shown otherwise, with the impact evaluation of the programme commenting that its impact on community members is 'strongly conditioned by the support of a paralegal in an advocacy institution, providing them with the resources to act' (EUROSIS, emphasis added).

This is also clear from the other African examples discussed in Chapter 3. Thus any future training has to be set within a wider framework where the paralegal, once trained, will be able to go back and work within a network that includes both the material resources to sustain their work, and professional support when needed. This latter point is especially important when they take on technically and politically complex cases, or have to resort to litigation or some other higher level of resolution beyond the immediate confines of the District in which the community lives.

The setting up of a Legal Department by the NGO CTV, and attempts (as yet unsuccessful) to set up legal support and empowerment NGOs in Mozambique, underline the importance of creating this kind of structure for paralegals – and paralegal training – to work more effectively.

### **5.1.5 The rights of women over land and resources**

When it comes to gender issues it is important to remember that although many customary norms and practices work against women and their rights over land, it is still important to respect cultural traditions and the legitimacy of local practices. These underpin the land management principles of the 1997 Land Law which recognizes customary forms of land management as a *de facto* integral part of the Mozambican land management and administration system. Thus almost at a stroke, the 1997 law gave full legal protection to many thousands of real land rights up and down the country which had previously only existed in a kind of locally legitimate social context, including those of rural women.

The land management role given to the 'local community' is also a huge step forward, especially in the articulation of relations between local people and investors. Had these provisions been held back by real and understandable concerns about how women are treated in the cultural context, the question of local rights seen more generically would have suffered a serious setback.

What is important however is that cultural realities are not seen as immutable. The paralegal programme has underlined both how complex this challenge is and how it is possible to effect change. On the one hand



it reaffirms the common sense and importance of recognizing the still predominant role of local culture and structures in land management and administration. On the other, it has been able to tell women – and male leaders - about the rights of women, in a way that can promote change in those cultural norms and practices that are prejudicial to women. In line with the FAO IGETI (improving gender equality in territorial issues) approach (FAO, 2012[b]), the starting point is a discussion of gender – by accepting this as one element of the diversity that must be respected in any society, the negotiations and discussion which then takes place around gender and the rights of women can result in an inclusive and negotiated approach to the access, use and management of land and natural resources by a variety of different actors.

This is not just a question of telling people what the law says. It is a question of legal empowerment, providing space for debate, providing resources like paralegals to assist and mediate the discussion, and also engendering change amongst key public sector and other actors who also need to be part of the gender and rights discussion. Through such an interactive and broad-based process which starts from the premise of respecting existing cultural traditions and also more fundamental rights, a seed can take root that will one day alter the local customs and do away with gender-based prejudice and injustice.

At community level it is clear that in fact ‘the gender issue’ is also about men, male leaders whose conservative attitudes – entirely understandable in the context of their daily lives and generations-old customs - still shape the gender reality at local level. Addressing the gender issue with women and men together will achieve the kind of change where women’s rights are secure as a matter of course, and women can participate alongside men in the consultations and other land management issues that are so important today.

## **5.2 Legal empowerment**

There are many definitions of legal empowerment that are broadly similar. Cotula provides one that he has developed from the work of Golub and

McQuay (2001, 2005): 'the use of legal tools to tackle power asymmetries and help disadvantaged groups have greater control over decisions and processes that affect their lives' (2008:15). Goodwin and Maru put it more simply and in a way that points to the power of the law to do good if it is used in the right way: 'efforts...that seek to increase the capacity of people to understand and use the law' (2014:9).

However, where the legal framework is poor or out-of-date, legal empowerment should also include changing the law: developing new laws and legal tools that give rights and power to those 'who understand and use the law'. In the context of land access and use, legal empowerment then implies two fundamental steps. Firstly, introduce changes to policy and laws that bend the way that land is accessed and used in favour of the poor and other groups (notably women) whose rights over land are precarious and limited. The second is helping these groups to use the new policy and legal framework to their advantage.

Earlier FAO programmes addressed the first step along the road to a more equitable and sustainable form of land management and land use. Both the 1995 NLP and the 1997 Land Law have set the parameters for a development process that is rights-based, participatory, inclusive, and equitable, for women as well as men. But a new law is not enough - to ask elites and investors to be more aware of local rights and then respect the right of the rights-holder to engage as a partner in development, or to promote gender equality and women's rights, means having to 'change the culture'.

The CFJJ-FAO programme addresses the second step. CFJJ-trained paralegals have a role that is about more than resolving injustice. The paralegal, as activist, community mobilizer and educator, legal advisor, and mediator, is an essential element in a development process which uses the available legislation to achieve the kinds of outcome foreseen in the NLP: secure rights, investment and the sustainable and equitable use of land and other natural resources. A good paralegal can not only address injustice on a case-by-case basis, but also initiate change from below, making the institutional landscape 'less barren' and giving local people the tools and knowledge to become agents for change themselves. This dual role

of the paralegal is greatly strengthened by also adopting the 'twin-track' approach of combining paralegal training with seminars and workshops for local government and other institutions.

Such an approach takes a long time - expect and plan for incremental change. It is not just a question of conservatism and resistant attitudes. Seeing legal empowerment as a two-step process which begins with efforts to change policies and laws implies a considerable timescale. Bit more than that, any project, even one dealing with the more negative aspects of customary behaviour must respect the underlying culture and proceed with sensitivity and understanding. In this context, 'legal empowerment' can be a very long term process.

CFJJ paralegals are charged with a wide range of responsibilities - sensitize, raise awareness, spread new ideas and provide tools - legal information and instruments - to overcome both injustice, and to use the law to promote a just form of development. Careful sensitization is crucial and a key element of the process of seeding social change to foster gender equality and reinforce the tenure security of rural communities and peasants in Mozambique. These social changes can only be assessed in a long term perspective and a project cycle of three years may be too short to bring about major changes.

The other paralegal programmes discussed above also adopt this kind of interactive role, linking their paralegal work with advocacy for policy change. For example in Uganda, the ULA draws upon the field evidence provided by the paralegal and LRIC network to support its higher level advocacy and policy work. The IDLO-Namati paralegals in Mozambique address gender and other customary normative issues while working with communities to secure their land rights. This takes the paralegal away from a direct concern with addressing the immediate problems of those who suffer from omnipresent 'power imbalances' (Maru, 2006), towards a more proactive form of engagement which involves civic education and capacity-building at community level, raising awareness of rights and how to use them.

The other side to this picture is to bring about change in state institutions. In the absence of more fundamental reform, the district officers' seminars and sector training help local government officers and other key public officials to be more aware of local rights and show them how to use the progressive legal tools that are available to engage with local communities in a more participatory, negotiated and equitable form of rural development.

Looking more closely at the second step above, it is also clear that an effective paralegal and local government training programme does not happen overnight either. A number of steps need to be taken before it can be developed and implemented. Figure 3 shows a possible time line based upon FAO's experience in Mozambique.

**FIGURE 3**  
**A long-term process of engagement and creating the context for effective 'paralegalism'**



Of course there is no guarantee that this new knowledge will immediately be put to good use once it is acquired, either by the community or individual female or male farmer, or by the District Administrator or judge who attends

a seminar. It is likely that both sides will run into a series of administrative and institutional obstacles as higher level political and economic interests continue to see things their way without having benefitted from the kind of training and exposure to the law that the communities and ‘frontline’ government teams have enjoyed. Thus empowerment is achieved with one hand – progress at local level – but can be lost again on the other, as socio-structural and political constraints higher make real change difficult. It is ultimately achieved when all sides and all levels are empowered, and..... Indeed many provincial and local government officers who have taken part in the programme refer to this ‘Catch 22’ they find themselves in, and argue for ‘their directors’ to also have the same training.<sup>55</sup>

### **5.3 Is legal empowerment enough?**

Like Sierra Leone, the institutional and governance landscape in Mozambique could also be characterized as ‘dysfunctional’ – it is still very weak in real terms once one leaves Maputo or the provincial capitals, and public services are stretched thin over the ground. Local government officers are unaware of the main points of the Constitution, let alone the finer points of the 1997 Land Law and gender issues. Judicial officers, even after attending the CFJJ-FAO seminars, play only a superficial oversight role. Moreover, cultural norms and a deep patriarchal tendency still give conservative local leaders a huge say in what happens, especially with relation to women and their rights.

The twin-track approach addresses this reality while at the same time ‘empowering’ the communities and the more vulnerable groups within them. The paralegals educate and assist communities and individuals, who in turn become ‘agents of change’. But they too are ‘agents for change’ – they are the ones who have to work with cultural and public institutions and overcome ignorance and prejudice when trying to make them work in favour of his or her clients.

This idea can be extended to embrace the figure of ‘the investor’ and his or her projects. Here, the paralegal is important as a mediator, a negotiator,

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55 Authors notes and post-seminar conversations with participants.

a representative almost, acting on behalf of communities but also seeking to integrate the needs of other actors into whatever solution materializes. Along the way they can induce change in the minds of the investors. It is their work – and their personal skills at communication and empathy with local people – that creates a certain capacity amongst their clients, those they help to also begin to demand a better response and more respect for their rights from those who claim to govern and serve them.

Here we have two distinct types of social action. One is the legal empowerment process described above, two long steps, a process that is built up over time by changing the rules and helping and educating citizens at local level. This is the core business of the paralegal. The second type of action is to promote ‘social accountability’. Maru (2010) observes that social accountability is something that has developed separately from legal empowerment, and cites a useful definition of the concept developed by Bjorkman and Svensson (2007):

‘an approach towards building accountability that relies on civic engagement where citizens and civil society directly or indirectly participate in extracting accountability (Malena et al, 2004)...most interventions have in common that they inform citizens about their rights and status of service delivery and encourage participation’ (ibid, quotation in Maru, 2010:85-86, emphasis added).

The key notion here is to extract accountability, even if the institutional landscape and policy framework is ‘barren’. The importance of the CFJJ-FAO programme is in showing that the social accountability of frontline civil servants in existing institutions can be improved if they are taught the same things about basic rights and new laws as the paralegals are teaching the communities, small farmer households, and women farmers. The same officials might also be able to stand up more effectively to those who “attempt to give the impression that they are powerful, or are sent by powerful people, or have been given decision making power by higher authority”, to repeat the statement by President Armando Guebuza quoted above (see pg. 29). This idea is supported by the review of 199 cases of legal empowerment work undertaken by Goodwin and Maru, who observe

that 'of all effects on institutions, the impacts of the legal empowerment interventions studied tended to be concentrated in local level changes in practice' (2014:32).

Maru had argued earlier that much could be gained from bringing legal empowerment and social accountability together (2010:83). The CFJJ-FAO programme has been doing this since 2006. Although it is too early to assess real impact, the signs are positive. The 2012 impact assessment of the programme is clear: 'the objectives of the [CFJJ]-FAO programme] have to do with promoting certain changes in the triangle 'State-investor-community and in the position of women....The majority of [those interviewed] declared that the situation has improved in all aspects' (EUROSIS, 2012:37). Most importantly in terms of the idea of extracting accountability while the long empowerment process works its way through, is the conclusion that relations between those working with communities and local government have improved, especially at district level and in districts where 'all sides have passed through the training. In these areas the [local government] sectors say that the Administrator no longer assumes an almost quasi-judicial role [addressing this was one of the principal challenges identified at the outset of the programme] and is now consulting with colleagues, both with the District Service for Economic Affairs [responsible for land management and administration] and with the magistrates. There is also more consensus about the content of rights' (EUROSIS, 2012:60 emphasis added).





## **6. Conclusion**

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### **6.1 A format for change – the empowerment chain**

It has long been clear that merely changing a law is not enough. Implementation involves a whole range of factors, from the political will to reform and direct government services to embrace the new legislation, to empowering administrative structures with new skills and adequate material resources, and informing the citizenry about their new rights and how to use them. The last of these is where the paralegal is to be found, but even he or she is not enough in this context. Some other form of engagement with the ‘dysfunctional institutional landscape’ is needed. It is in this context that we believe the FAO experience offers a concrete and effective format for promoting social change and for achieving the implementation of progressive new laws that challenge conservative orthodoxies and vested interests, and which take a people-centred approach to development.

The programme has also made all of its target groups much more aware of gender, what it means, and how it applies to both women and men (it is not just about ‘projects for women’). All these aspects are addressed in interactive and practical training sessions with the expectation that by addressing both sides of the ‘landscape’ – the communities and their members, and the ‘barren institutions’ – real legal empowerment takes place resulting in a far more equitable and sustainable development process in which all sides gain at least sufficiently to be able to grow and gain both socially and economically.

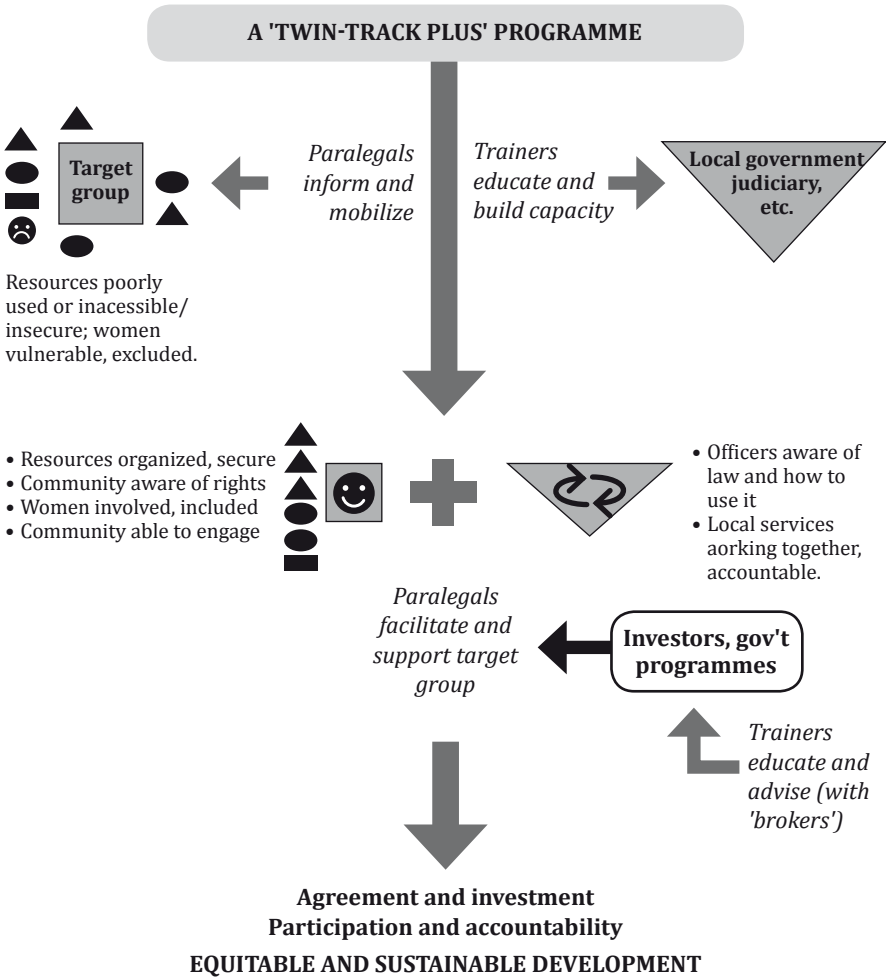
The model developed through the CFJJ-FAO programme recognizes that legal empowerment involves a great deal more than simply reforming or creating new laws, and even more than providing judicial services and paralegals. It also requires a long term perspective in which a series of enabling conditions are put into place, and activities are implemented which may at first glance seem irrelevant to legal support work.

Taken all together, these various actors, steps and activities can be seen as an 'empowerment chain' which in fact can begin far back in earlier processes that engage stakeholders in the development of policy and new legislation. The chain involves contributions by many different institutions and people, and the active engagement of the beneficiaries target groups – communities, small farmers, women – who are 'empowered' by first knowing what their rights are and how to defend them, and then by being given the tools to use their rights in a proactive way with other social, economic and political actors to participate fully in the development process. It also involves 'extracting accountability' in the very likely context that political and institutional change will lag far behind the empowerment process. Figure 4 shows this as a continuous two-way interaction between communities and a series of actors - including paralegals - which progressively builds up a capacity to stand up to injustice and engage proactively with the outside world.

This model can do more than address injustice – it can provide key actors on both sides of the local development process with the tools they need to make their communities and their district a better place. This more systemic approach will do more to address injustice in the long term than any number of well-trained paralegals or lawyers confronted with an unchanging landscape of uninformed local people and local government staff who do not understand the laws they are expected to implement.

It is clear from paralegal programmes in other countries as well that setting up such a process takes a huge amount of effort and time. Keeping it going and consolidating it all into a sustainable service that can be relied upon by ordinary people well into the future requires even more resources and effort. The FAO time line above stretches from early 1995 to 2014. Timap began in 1996 and only in 2012 Sierra Leone approved a paralegal act in its Parliament; LAC opened its doors in Namibia in 1998, and now the University is to offer two-year courses for paralegals; NADCAO and the LRC have their roots in Apartheid South Africa. This is indeed a long term activity.

**FIGURE 4**  
**The empowerment chain and development**



Meanwhile it is very clear that paralegals are here to stay, and are doing impressive work with very little training and often with limited resources. In 2012 a conference was organized by Global Rights Uganda, the Open Society Initiative and Namati, in Kampala, Uganda. It was attended by paralegals from 50 organizations in 20 countries across Africa, who shared experiences and discussed the major issues affecting access to

justice in their countries, especially among the poorest. Following the meeting, the Kampala Declaration on Community Paralegals was adopted (Kampala, 2012) , urging governments to strengthen access to justice and accountability across the continent by embracing the potential of community paralegals. More specifically, the declaration, calls on governments to do three things: (i) to recognize the role community paralegals play in providing primary justice services; (ii) to invest in the scale-up of paralegal efforts; and (iii) to protect the independence of paralegals. The following quote from the Preamble also underlines the roles of paralegals not only in addressing injustice, but as proactive agents assisting with and promoting development:

Community paralegals have empowered people in many parts of Africa to equitably resolve conflicts; to seek protection from violence; to navigate the criminal justice system; to exercise rights over land and natural resources; to access essential services like health care and education; to hold private firms accountable; and to participate in the economy on fair terms. By doing so, these paralegals further both justice and development. (ibid:1, emphasis added)

It is also clear from the discussion of both the country examples above, and the CFJJ-FAO programme, that paralegals cannot and should not work alone. Paralegals need to have some kind of structure within which they can work after training, which provides them with an institutional identity, basic resources like transport, and a functional link to a central body where professional legal support is available. Much can also be gained from much greater collaboration between paralegal programmes and the wider legal profession in their countries. The tradition of *pro bono* work is well established in the legal profession, and is present in most of the countries discussed here. Fostering this kind of link is an important part of ensuring the longer term sustainability and impact of their work. To quote Ndlovu once more, ‘There is a need to engage the legal profession more profoundly; in particular to educate them about the important role that paralegals can play complementary to, rather than in competition with lawyers, and to enlist their support in working for formal recognition of paralegals’ (2005:28).

What the CFJJ-FAO programme adds to this is the role of paralegals as agents who can make an impact from below, on the 'barren institutional landscape'. Both in their own right and through their impact on those they work with, paralegals are important agents in the process of legal empowerment. If this is reinforced by measures which raise awareness of rights and how to apply the law correctly, amongst 'frontline' local government and judicial officers, the overall impact of paralegal services can be even greater and perhaps more sustainable. In this context it is its impact on the causes of injustice that it is given special prominence, as empowered citizen exercise their rights with more confidence, and succeed in 'extracting accountability' from those (now more enlightened) public servants whose duty it is to respond to and protect their interests.

## **6.2 Using this approach in other contexts**

The CFJJ-FAO paralegal programme is best seen as one of several interventions to implement a progressive new land and natural resources governance framework in demanding operational and political circumstances. Obviously there are elements that are specific to Mozambique, but there are some principles that can be drawn from the discussion that are useful if the approach is to be adapted to other countries and contexts.

Firstly it is important to have a long term view. The CFJJ-FAO programme is one step further along a 20-year story of policy and legislative support, institutional development and capacity-building. Developing any new law is a complex task, especially when it is socially progressive and challenges vested interests, and a lot of consensus building and education will be needed to see it through to full potential.

Secondly, the law is indeed 'not enough'. To achieve genuine empowerment, which in turn leads on to citizens exercising their rights and fully participating in local and national development, a great deal more is needed. The implementation plan must be comprehensive, extending beyond merely reforming land management institutions, to reach citizens and involve them actively. It must also be set within a wider development

strategy which people-centred and prioritizes social equity and justice over the imperative of economic growth.

The reform of the institutional architecture is beyond the scope of this kind of programme. But in the absence of more difficult to achieve institutional reforms, one approach is to initiate and support pressure for change from the bottom up (the role of the paralegal); and to 'extract accountability' by changing the hearts and minds of those who have to implement new laws at local level. They are the ones who have to deal with local people, investors and other stakeholders, and they are the ones who have to deal with the consequences of a failure to take into account the rights and interests of all those who to use land for one reason or another.

Paralegals trained in the relevant laws and with a proactive role in the development process are an important innovation in the struggle to implement new and progressive legislation in an era of aggressive capital and elite-led investment and economic growth. The paralegal however, though shown to be an important 'agent for change', is a 'necessary but not sufficient' item in the tool kit of measures that can produce genuine legal empowerment and bring local people into the development process as real stakeholders, aware of their rights and able to negotiate with those who want to use their land. Other elements are needed to break down the institutional and cultural norms that block implementation and prevent a progressive law from reaching its full potential. Thus 'the law is not enough' and neither are paralegals. Both are essential elements in an 'empowerment chain' that is an essential input to good governance and which make ordinary people into active participants in development instead of mere bystanders watching others use their land and resources while they remain poor.

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The Mozambique land law provides statutory recognition of customary land rights and is considered one of the most progressive legislations in Africa. However, the law continues to face implementation challenges, including the realization of equal rights for women and institutional reform. Simply having a progressive law 'is not enough' to bring about transformative change in a country. Recognizing these challenges, the Food and Agriculture Organization of the United Nations (FAO) developed a programme to support the legislation through the capacity development of both direct beneficiaries and those responsible for implementing it.

This publication, presents an overview of how this programme developed and what it has achieved to date. It highlights the lessons learned from this core element of FAO's long history of support to the land programme in Mozambique. In particular, the study discusses the challenges facing land and natural resources paralegals in Mozambique today and helps to define the parameters for programme assessment by looking at paralegals in different country contexts. It describes how the programme has included training and capacity-development, not just for NGO-sponsored paralegals, but also for district and local government level officials, justice system officers and staff from public sectors working with land and natural resources.

The study shows how the use of this innovative 'twin-track' legal empowerment methodology can overcome a series of institutional and capacity constraints within the context of what it calls 'the empowerment chain', and promote a more participatory and inclusive form of development. Additionally, with a programme focus on gender equality, the study documents its approaches to help protect the land and resource rights of women.

Finally, the study argues that although paralegals are an important innovation in an era of aggressive elite-led investment and commercial pressures on land, they are a 'necessary but not sufficient' measure to bring local men and women into the development process as real stakeholders. Further measures are still needed to break down the institutional and cultural barriers that prevent a progressive law from reaching its full potential.

ISBN 978-92-5-108248-5 ISSN 1014-6679



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I3694E/1/11.14