

Legal support for the implementation of Mozambique’s ‘Land Law’ and ‘Forestry and Wildlife Law’

Summary

At the request of the government, a number of FAO projects, under the Technical Cooperation Programme and the Government Cooperation Programme, have contributed to regulate access to and use of land and natural resources. FAO provided support to policy development and the drafting of implementing legislation, followed by support to implementation and awareness raising on the new laws amongst public-sector agencies and the wider society. The two latest Government Cooperation Programme projects have had a strong focus on developing the oversight capacity of the formal judiciary, and the legal empowerment of local people through a paralegal programme. The programme as a whole has had an immediate impact on the day-to-day approach to governance and the administration of justice at local level, and is seeding new ideas and capacities amongst a new generation of judicial actors.

The major factors contributing to this success were:

Government’s interest. The interest of the Government of Mozambique in regulating land and natural resources use and access dates back to the mid 1990s and has remained over the years.

Participatory approach. An inclusive and highly participatory approach was adopted, ranging from senior officers to community members.

Long-term engagement of FAO. The use of different programming mechanisms enabled FAO to remain engaged for more than ten years.

Identification of local/national “champions”. The Centro de Formação Jurídica e Judiciária (Centre for Juridical and Judicial Training, CFJJ) within the Ministry of Justice actively engaged in capacity building activities.

Design of the capacity-building interventions. Project’s interventions were integrated into CFJJ’s core activities.

Combination of modalities of intervention. Development of a training methodology, production of legal reference books, study tours to Brazil, paralegal training, field case study research, and advocacy.

Enhancing south-south cooperation. Study tours to Brazil established an important relationship between the judiciary of these two countries.

1. Context

Land and natural resources are the foundation for most economic and social activities in Mozambique. Since the 1990s, the Government of Mozambique has focused its efforts on developing a regulatory framework on access to and use of natural resources.

The current *National Land Policy* was approved in 1995, followed by the implementing Land Law in 1997. The new legal framework recognized the customary land rights of the rural population and gave them full legal equivalence to the state-issued Land Use and Benefit Right, or DUAT, its Portuguese acronym. The law also requires local communities to participate in natural resource management and in the resolution of resource conflicts. This includes the issuing by government of new DUATs to investors, who are required to consult with local communities and gain their approval before a new land right can be issued.

The *Forestry and Wildlife Law* was approved in 1999, and also gives local communities strong subsistence rights over resources, while mobilizing private-sector investment in forestry and wildlife.

The new rights and responsibilities created by both laws gave rise to new modalities of interaction between communities, the private sector and government. However, inadequate institutional reforms and capacity building in the land administration, coupled with rapidly rising private-sector demand for land, has led to an increasing number of disputes. Most follow a mainly administrative channel, often without success, underlining the need for more effective judicial intervention. Among the issues that stands out is the recognition *in practice* of customarily acquired DUATs (which do not have to be registered or recorded on official maps), as the state and its favoured interests attempt to use the constitutional principle of state ownership of natural resources to achieve its ends. Others issues include the closure of customary rights of way (protected by law), the acquired rights of communities in protected areas, and the lack of proper consultations as required by law.

The Forest and Wildlife Law also addresses crimes such as illegal logging, poaching and the extraction of endangered and listed species, which all require judicial intervention. However, the fines laid down are often far out of reach of the ordinary citizen, and the practical application of the law is fraught with difficulty.

Hence, adequate judicial oversight of the application of the new land and resources laws are essential if the laws are to fulfil their potential as instruments for equitable development and poverty alleviation.

Together with concerted efforts by civil society and donors, the government implemented its first National Plan of Action to Reduce Absolute Poverty (PARPA), now in its second stage (PARPA II). One of its six priority areas is “good governance, legality and justice”, and in this context secure land and natural resources rights for the poor are recognized as an essential condition for combating poverty. The defence of rights under the law, and the appropriate application of fines and other sanctions fall squarely within current government social and economic policy.

In 2000 the government, through the Ministry of Justice (MoJ) and the High Council of the Judiciary, set up the Centre for Juridical and Judicial Training (CFJJ) to improve the capacity of the national judicial system. The CFJJ is now the leading institution in the country devoted to training the judiciary: all magistrates (who must be law graduates), attend a ten-month course before being posted to the national court system and to the Public Ministry/Prosecutor General Service. With FAO’s support, land and natural resources legislation has been integrated into the CFJJ programme in several innovative ways.

2. Capacity development intervention

At the request of the Government of Mozambique, FAO has been actively involved for more than ten years in the development and implementation of these new laws.¹

¹ FAO contributed to the formulation of the *Land Law* and implementing regulations through two projects under the Technical Cooperation Programme: *TCP/MOZ/2235 – Support to the National Land Commission* and *TCP/MOZ/6612 – Support to the Consolidation of the Land Commission*. These were followed by a Government Cooperation Project funded by the Netherlands, *GCP/MOZ/059/NET – Assistance to Mozambique in Developing and Implementing a National Land Programme*. Support to the *Forest and Wildlife Law* was provided through the Technical Cooperation Programme, under *TCP/MOZ/050/NET – Assistance to Mozambique in Forestry and Wildlife Legislation* and *TCP/MOZ/2904 (A) – Support to Implementation of Forestry and Wildlife Legislation*.

This case study will focus on the capacity development interventions carried out for the implementation of these laws.

2.1 Judicial and legal capacity building – phase 1

The first judicial and legal capacity building project started in early 2001,² marking the beginning of a successful programme that now spans eight years. It was to be implemented by the Supreme Court, but the CFJJ had just been established at the time and it was agreed that it should take over implementation.

The project was designed to equip the formal judiciary and community courts with the knowledge and skills needed to interpret and apply the new legislation. **It included four inter-linked components:** (i) **training** of provincial and district judges and prosecutors; (ii) **production of legal reference books** on land, forestry and wildlife; (iii) **study tours** to Brazil and return visits to Mozambique by Brazilian experts; and (iv) **field research** to develop a training programme for Community Courts.

2.1.1 Training

CFJJ core staff and national legal experts worked with FAO to design a training methodology and manuals covering the three laws (environment, land, forestry and wildlife). Leading national and international experts, including lawyers, sociologists and field practitioners, all contributed to the training, which focused on real implementation problems identified by the learners themselves. Ten short-term courses were developed for existing judges and public prosecutors and covered technical aspects of the laws as well as the social, economic and environmental issues that lie behind the policy and legislative reforms. This material is now fully integrated into the core professional training for new magistrates. Many participants already had long experience “on the bench”, but recognized the importance of the training because of the challenges presented by new laws that incorporate strong elements of customary legal norms and practice.

2.1.2 Legal reference books

The project produced annotated legal commentaries on the three laws, to be used by the judiciary, legal professionals, law students and legal academics. The commentaries included the social, economic and environmental context as well as pertinent comparative experiences. All commentaries were published, and most volumes are now in their second editions. They are still used in the CFJJ courses by a wide range of practitioners in law firms, universities and public service.

2.1.3 Study tours

The study tour programme involved visits by senior Mozambican judges and ministry officers to counterpart institutions in Brazil. The main objectives were to: enable participants to compare legal systems with respect to legal education and special courts; to allow the Mozambicans to learn from a country with a common legal heritage, and one in which the ministry has developed a strong *modus operandi* (including legal instruments for conflict resolution) at state and federal levels for defending public rights created by new environmental legislation. A return visit by Brazilian judges and legal training experts, and continuing study tours under the second phase of the project, have consolidated an important link between the Brazilian Public Ministry Graduate Schools and the CFJJ.

2.1.4 Field research

A field study was carried out by the CFJJ and the national research group *Cruzeiro do Sul*, to explore the role of Community Courts and other community-based institutions in land and natural resources

² *GCP/MOZ/069/NET, Support to the Judiciary in implementing New Legislation on Land, Environment, Forestry and Wildlife*, supported by the Netherlands and implemented by FAO from 2001 to 2004 with a budget of US\$ 1,320,000.

issues. This socio-legal research aimed to identify the most common types of disputes, and assess training needs for community court magistrates with respect to land, environmental, forestry and wildlife law issues. The initial findings revealed that there was a vacuum at local level when it came to judicial interventions, with no bridging of the gap between the customary system of rights and resources management, and the formal system of the judicial courts, as used by the public administration and the investment community. A serious lack of awareness of basic constitutional principles was also identified. However, plans to reform the legal framework of the Community Courts put this exercise on hold. Instead, attention turned to more detailed research on how land and natural resources conflicts were being addressed. This research identified an expanded range of actors for whom training in the new laws would be important, and underlined the need for a new follow-on project with a stronger focus on community level interventions and district-level capacity building. While this follow-on project was being developed and approved, the FAO Livelihoods Support Programme supported further research into community-investor consultations.³ This additional research produced two publications⁴ for the new project phase.

Box 1. A participatory approach

FAO has followed a strong participatory approach throughout its programme of support to land and natural resources policy and legislative development and implementation in Mozambique. The strong FAO commitment has continued through the long-running partnership with the CFJJ, which also embraced the need to work with a wide network of government and civil society partners. National execution through Letters of Agreement is also central to the FAO approach, building CFJJ capacity to carry the programme forward once external support ends.

The Development Law Service of the FAO Legal Office has provided backstopping support to the CFJJ programme, while carrying on the successful inter-service cooperation with FAO Land Tenure Service established in the earlier TCP and GCP Land Commission projects. Legal officers have worked closely with the resident Chief Technical Advisor based in Maputo, and many international consultants and national consultants have been involved in different substantive and operational aspects of the projects.

2.2. Judicial and legal capacity building – phase 2

The intervention began in early 2005⁵ with four components: training and seminars, study tours, research activities and technical assistance to partner programmes.

2.2.1 Training and seminars

Intensive short-course trainings were organized for community paralegals (mainly NGO field officers) in the main natural resources laws. Community meetings and discussions were an essential part of the training.

Moreover, district officer seminars were organised, bringing together the Administrator, District Judge and Prosecutor, Police Chief and Director for Economic Affairs from selected districts to discuss how to use the land and resources laws to promote local development, and to understand their respective roles in conflict resolution and how they can work better together. The seminars also addressed basic constitutional concepts such as the rights of the citizen, and the separation of powers, and the roles of each of the branches of State in different development and conflict resolution situations.

³ These are required by the 1997 Law whenever new investors seek new land rights, and are designed to protect local rights and if possible generate benefits for local people who give up their rights to the investor.

⁴ LSP Working Papers Nos 27 and 28

⁵ “GCP/MOZ/081/NET Decentralised Legal Support and Capacity Building to Promote Sustainable Development and Good Governance at Local Level”. From 2005 to end-2008 with an initial budget of US\$ 2,400,000, extended to just over US\$ 3 million after a successful mid-term review in March 2007.

The paralegal courses and district officer seminars enabled to address the issue of rights and how to exercise them from two opposing but complementary directions⁶. In fact, by creating a stronger awareness of rights at local level, and by providing basic legal support to communities, a stronger demand by communities themselves for a better administrative and judicial response was created.

2.2.2 Study tours

The cooperation with Brazil was carried forward but with a stronger focus on the role of the ministry in defending rights and upholding the law. Three visits were made by Mozambican prosecutors and senior CFJJ staff to Brazil (including the new CFJJ Director). The third visit resulted in the signing of longer-term cooperation protocols, thus cementing the relationship between the CFJJ and its Brazilian counterparts.

2.2.3 Research activities

Alongside the training programme, the earlier research exercise on conflicts evolved as an instrument to monitor the performance of local tribunals and other key actors such as District Administrators, as well as to monitor the relationships between communities and the state at local level. A conflict database was developed, which potentially can become a future ‘Justice Observatory’ to be launched by the CFJJ as part of its new longer-term strategic plan for 2009-2012.

The national research staff have also carried out thematic research on: the land rights of women in the context of the HIV-AIDS pandemic (in collaboration with UNAIDS and UNFPA); and community-private sector partnerships using local land rights as a lever to generate new resource flows to local people (in collaboration with IFAD). Fieldwork case studies have since formed the basis of a body of jurisprudence in land and natural resources issues. They have also provided case material for the CFJJ training programme.

2.2.4 Technical assistance to partner programmes

The last modality of intervention has been technical assistance and advocacy work, conducted by CFJJ staff and the FAO Resident Technical Advisor. CFJJ staff were supported to take part in regional and international meetings where the results of the judicial and legal capacity building programme were presented; various papers were written and the FAO Technical Advisor has also published and presented this work in a range of fora and workshops. Support to partner programmes in Mozambique includes FAO projects where the use of the new land and resources laws is a practical tool for achieving food security goals. For example, a Nutrition and Food Security project in Manica province⁷ and a programme which supports community-investor partnerships in eco-tourism such as the African Safari Lodge Programme, implemented with Ford Foundation support, in which the project team has been a core Working Group member from its inception.

3. Results

3.1 Capacity building for judges and public prosecutors

From 2001 to 2004, ten two-week training courses were organized in nearly all the regional capitals of Mozambique, and reached about 85 percent of Mozambique’s Provincial and District Judges (102 judges and 89 public prosecutors).

Materials produced include published legal manuals for each of the three laws (environment, land, forest and wildlife); published collections of the main laws and related constitutional

⁶ See Carlos Serra Jr and Chris Tanner, 2008, *Legal Empowerment to Secure Land Rights in Mozambique. A Case Study*. In: FAO (NRLA), Resource CD: Legal Empowerment in Practice. Making Land Rights Legally Secure for All. FAO Land Tenure Collection n.4

⁷ GCP/MOZ/027/BEL *Improving Nutrition and Household Food Security in Manica Province*.

principles and other legislation, again in each area; and annotated legal commentaries written by leading national legal experts. All of these are now into their second editions, with new laws and other revisions incorporated, and have been made available in national bookshops, law schools and legal firms in the country.

Two exchange visits were undertaken with Brazilian counterpart institutions. First, six Mozambican judicial officers including the CFJJ Director visited Brazil (Sao Paulo and Pernambuco). Subsequently, six Brazilian judges and judicial administrators visited their Mozambican counterpart institutions at national and provincial levels to work with members of the Mozambican judiciary to assess the court system and identify areas where procedures in addressing land and environmental cases could be strengthened. The Brazilian team also took part in one of the training sessions for district judges, and the specialist in mediation techniques who was in this group has since returned to the Centre to provide specialized training in this area. Mediation courses are now included in the CFJJ training programme.

Planned capacity building for the Community Courts was set aside when the government began the reform of the judicial sector including these courts. Project resources instead were refocused onto a study of Land and Natural Resources Conflicts, in the final year (2004). At the same time, FAO supported an impact assessment of the ten courses that had been completed.

The Impact Assessment strongly endorsed the methodology and structure of the training. It showed that the courses had a positive impact on the basic knowledge at individual levels. Those who participated in the CFJJ/FAO courses had much higher scores than those who did not. Behavioural changes in professional performance were also reported thanks to the improvement of the training methods. When set alongside the Land and Natural Resources Conflict Study however, it was evident that practical impact on the ground was limited by the institutional and working environment of course participants.

3.2 Decentralized legal empowerment and capacity building

The second phase of the intervention shifted the focus of the CFJJ-FAO programme to district and community levels. To date it has carried out ten paralegal courses in 45 communities, training a total of 227 people, including representatives from NGOs (179) and local government officers (48). The courses include one week of formal classroom sessions, and a week of community meetings and interactive discussions about the issues identified in these meetings. The courses have succeeded in taking awareness of the 'benign' role and relevance of the judicial system and legal support down to local level.

Six District Officer seminars have been carried out, covering 36 districts (out of a total of 127). These events provided an opportunity for key public officers, who rarely have the chance to sit and work together, to discuss and reflect on ways in which local government and local judicial services could respond to local demands and needs.

A Paralegal Training Manual has been developed interactively over the period, and is now being prepared for final publication, with a view to using it in the third phase of CFJJ-FAO cooperation that will run until 2012.

Three study tours to Brazil were organized, involving prosecutors and senior CFJJ staff, including the new Director. These have proved highly successful in seeding new ideas amongst the emerging group of professionally trained prosecutors, regarding the legal oversight role of the Public Ministry and the question of safeguarding rights and the rule of law generally.

The case study and thematic research component has compiled a total of 327 cases. Focused research on the land rights of women in the context of the HIV-AIDS pandemic, and community-investor partnerships, have brought in new UN system partners: UNAIDS, UNFPA and IFAD. Linked to the research programme, the project has supported the development of a new CFJJ website, and a new Working Paper series that is soon to be launched under the title '*Sociedade e Justiça*'. These new ventures will serve to showcase the CFJJ programme and disseminate its work to a wider audience.

Finally the Technical Advisor's support to other programmes has helped to consolidate key flagship cases of new community-investor partnerships that are essential to show government and other stakeholders a more participatory and equitable model of rural development using the land and other natural resources laws.

Wide participation in range of national and international meetings and workshops has also kept alive the issue of the rule of law when implementing this innovative legislation. Most importantly, this participation in other fora, backed by a solid field and training programme grounded in the current situation in Mozambique, has been instrumental in building a role for the CFJJ as a centre of reference and respected partner when it comes to national discussions of the current policy and legislative landscape for land and natural resources.

4. Critical factors leading to successful capacity development intervention(s)

The results of more than ten years of cooperation between CFJJ and FAO have demonstrated the importance of a number of factors for successful capacity development:

Government's interest in regulating access to and use-rights over land and natural resources

Since the mid 1990s, the Government of Mozambique demonstrated a certain commitment to regulate access to and use of the country natural resources. However, the irregular application of the new legal framework further motivated the government to engage in a long-term activity with FAO.

Participatory approach resulting in a network of representatives at all levels

What stands out throughout the programme – from legislative development through to the present legal training and local community legal empowerment – is the strong emphasis on participatory approaches at all levels, a strong partnership between FAO and the counterpart agencies, and the development of and constant interaction with a wide network of local government and civil society partners, both as beneficiaries (in the training) and as implementation partners.

Long-term engagement of FAO

The long-term engagement of FAO through the use of different programming mechanisms (two Technical Cooperation Programmes and two FAO/Government Cooperation Programmes, and the Livelihoods Support Programme) has enabled FAO to make a long-term commitment, now spanning 13 years. This has yielded better results in bringing changes at institutional level, and has built a high level of trust and appreciation by the Government. Early use of Technical Cooperation Programme resources established a strong comparative advantage and network of partners. A successful partnership with a committed donor allowed a series of activities to develop within a long-term programming framework. Each phase

moved the programme to evolve in a slightly different direction, while retaining focus on the key questions of poverty alleviation, inclusion and participation, and good governance.

Identification of local/national “champions”

FAO has also had the advantage of working with a key “national champion” - the Centro de Formação Jurídica e Judiciária (CFJJ) – which has allowed a shift away from direct implementation via the line sectors, towards the development of an authoritative position with regard to the *correct* implementation of the legal and policy framework. The CFJJ had a clear institutional mandate and position within the Ministry of Justice. Its independence, the integrity of its leadership, and the competence and commitment of its staff contributed to its high profile and to the quality of its performance.

Design of the capacity-building interventions

FAO capacity-building interventions were designed to be implemented from within the CFJJ. The mainstreaming of the programme outputs into CFJJ core activities ensured the long-term sustainability of capacities developed at institutional level. In this context the CFJJ and FAO focused on developing a strong knowledge base of the legal framework and on building a powerful model that integrated: enhanced legal empowerment at community level (creating demand for rights and better public service response); a better understanding amongst key public sectors of citizens rights; and the use of innovative laws to promote equitable development and reduce poverty.

Combination of modalities of intervention

The various modalities of intervention were designed to be mutually reinforcing e.g. field research provided the justification and direction for follow on activities, while building a substantive body of jurisprudence which subsequently informed and upgraded both the CFJJ training programme, and has fed into the wider national debate.

This still-evolving programme has trained literally hundreds of key judicial, public service and NGO staff, and has taken the notion of legal empowerment and the rule of law right down to community level. In the current climate of aggressive private-sector land demands and pressures to reform the law in favour of large-scale investors and an emerging national entrepreneurial class, it is important to seed change from the bottom up in this way.

Enhancing south-south cooperation through study tours

Finally, the study tour component has seeded new ideas in the minds of younger professionals who will one day occupy the higher levels of the judiciary and the Public Ministry. It has established an important and still active relationship between the CFJJ, the Mozambican judiciary, and their Brazilian counterparts in a key south-south cooperation framework.

5. Further reading and information

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