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LEGAL SECTOR CONSULTANCY REPORT
FOR
USAID/MOZAMBIQUE

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EXPLANATORY NOTES

EXPLANATORY NOTES

The notes that follow are provided in response to the comments of the Mozambican Ministry of Justice, conveyed to the consultants by AID/Maputo. These notes supplement and explain changes made (or in some cases not made) in the text as a result of the MOJ's comments.

LEGAL SECTOR SURVEY:

1. The MOJ states that a career system for judges now exists in Mozambique. The consultant agrees, but notes that this system is not fully in operation because the process of implementing the statute providing for such a system began recently. (See page 4 of the report).
2. The consultant does not deny the need for some law graduates in the Administrative Court and the Registries, but questions whether the numbers of lawyers estimated by the World Bank project Working Group are necessary. He suggests that careful consideration be given to potential roles in these institutions for public administration graduates and other non-lawyers, since the expense and time required to produce fully trained lawyers is so great.

LEGAL EDUCATION ACTION PLAN:

1. The consultant acknowledges the availability of certain training opportunities for paralegals, law clerks, and legal technicians. However, it is the consultant's opinion that the emphasis on *licenciados* is excessive.
2. The newsletter mentioned on page 10 (point 8) of the report is presented merely as a type of activity that might be considered. The consultant appreciates that it cannot be accorded top priority.
3. The MOJ has commented that strengthening of training staff for CEJ can only be of low priority, since few instructors are available, many of whom are full-time judges or lawyers. The consultant appreciates this constraint, but nevertheless recommends the training of instructors as an important measure to meet prospective manpower needs.
4. The MOJ has noted Portugal's apparent inability to fund TA from Portuguese CEJ. The consultant realizes that this presents a significant problem, but does not recommend that AID/Maputo take up the slack. The World Bank might be a more appropriate funding source for this activity, especially since the Bank is heavily involved in this capacity-building sphere of activity in Mozambique.

LEGAL REFORM ACTION PLAN:

1. The listing of code provisions in need of revision due to incompatibilities with and implementation requirements arising from the new constitution has been deleted from the body of the report, in response to the MOJ's comment that it was not useful. The consultant nevertheless strongly recommends that some such inventory be made, that on this basis the MOJ and sectoral ministries reach consensus on priority areas for legal reform, and that these lists be updated regularly. The consultant's listing is preserved in Annex 6, and can be used as a point of departure for a more precise catalogue of statutory changes required by the new constitution.

2. The consultant has attempted, in response to the MOJ's comments as to its current priorities, to change the order and emphasis of the different sections of her report. However, the consultant's work has mainly been directed by the priorities stated by the MOJ at the time of the consultant's visit to Mozambique. The MOJ in its more recent comments has set forth a somewhat different set of priorities from what the consultant had understood at the time of her field visit. The MOJ's comments also seem to indicate that it expected a complete discussion of the codes and legislation reviewed by the consultant. By contrast, the consultant had interpreted the purpose of this consultancy to be that of mapping a strategy rather than providing a complete analysis of the legislation. Unfortunately, the consultant's ability to reorient her report at this point is extremely limited.

The consultant therefore suggests the following steps for future activities in this area. The MOJ should make a timely decision as to whether to make a revision of every code in terms of compliance with the Constitution and other previous laws, or take advantage of this unique opportunity to modernize the legislation in toto. It would also be extremely for the professors of the Faculty of Law, the Supreme Court Justices, INAJ members and the Bar Association to prepare position papers as to what changes they would like to see in the new legislation.

3. The unavailability of important legal texts also posed a problem for the consultant and at present severely restricts her ability to address new areas identified by the MOJ's comments. The consultant does not have at her disposal the legal texts relevant to the areas not covered in the original report, neither in the materials she brought from Mozambique nor from the foreign law collections in Washington. The Consultant has had to depend on the host country for information on current legislation. However, as is discussed in the report, all relevant texts were not made available even in the areas originally addressed during her visit to Mozambique, despite her attempts to obtain them. Even if a library had been made available to the consultant (it was not), it would have been impractical to review all the legislation given the time allotted and the scope of the work involved. The laws are not indexed nor have they been entered into a computerized form.

Some of the observations by the MOJ as to inaccuracies in the report derive from this problem. In future, the consultant suggests that USAID and MOJ arrange for the

preparation and availability of the texts of Codes, laws modifying the Codes, Diplomas, Supreme Court Orders, case law and the like that relates to the subject matter of the consultancy so the consultant has a good basis for his/her work.

4. The MOJ's comments indicate that environmental law is not a current priority, nor does it come under the MOJ's mandate. During her visit to Mozambique, the consultant was under the impression that the Ministries and USAID wanted the consultant to pay specific attention to the environmental/natural resources laws. The report was written accordingly. Further, the consultant was never aware until now that the MOJ did not view itself as having jurisdiction over natural resources laws. In reviewing the Civil Code of Mozambique one finds articles dealing with natural resources issues, and it appears from the comments that the MOJ has jurisdiction over the Civil Code. In response to the MOJ's comments, the consultant has accorded environmental/natural resources laws a lower priority than in the original report.

5. The MOJ's comments indicate that it wishes USAID to provide assistance with the drafting of a new Civil Code. The report has been amended accordingly, but the MOJ's comments do not make clear what parts of the Civil Code should be the focus of revision.

6. The MOJ has indicated that the drafting of new codes on criminal law and procedure are high priorities. In Mozambique, the consultant visited the office of the Attorney General on four occasions and understood from the remarks of those interviewed, that some preparatory work for a new Criminal Code had been done in this area. The consultant understood the Government had produced a draft law which was not shared with the consultant. In compiling information for a new criminal code, the GRM should make available to the consultant the following: (1) statistics of the country for criminal acts to determine the kinds of crimes and numbers of offenders, (2) new crimes, and (3) other legislation containing criminal provisions-for example the Law of the Press and Health Laws. The consultant should also visualize new crimes that could arise in the future as the country develops a more complex society. The consultant has provided changes in the text to conform with these suggestions.

With respect to the Code of Criminal Procedure, as noted in the report, the Consultant had been informed that assistance in this area would be forthcoming from the Government of Portugal. Therefore, this was not included as a priority for AID support. If the above-mentioned assistance will not be provided by Portugal, then a consultancy for the drafting of a Criminal Procedure Code can be added to the Penal Code terms of reference in Annex 3 to the report.

7. It appears from its comments that the MOJ is requesting USAID to assist in drafting a maritime law. It is the understanding of the consultant that some work concerning this subject has been done by a consultant of the World Bank. The identity of the Consultant can be obtained from the World Bank in Maputo.

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I. INTRODUCTION

In 1991 the A.I.D. Mission to Mozambique entered an agreement with the Government of Mozambique (GRM) to carry out the Democratic Initiatives project. The project is to provide rapid and flexible assistance to the GRM and non-governmental entities in order to facilitate the transition to democracy and to begin to address some of the immediate problems caused by the severe governance constraints that have been identified and allow the USG to continue to deepen its own understanding of governance problems in Mozambique should it decide to support project interventions with longer-term objectives at a later date.

The project included as one of its purposes the institutionalization of an independent judiciary and the elaboration of necessary legislation as part of the overall effort to establish the rule of law. The project included among its expected outputs:

- a legal sector survey which would: (i) assess the relationship between the executive branch of the GRM and the judiciary and suggest measures to promote the independence of the judiciary; and (ii) analyze the structure of the legal system including an examination of the administration of justice and make specific recommendations for its development and revision;
- a training needs assessment for judges and other members of the judiciary and for para-legals;
- a legal education action plan which reviews current legal education activities and needs; defines short, medium and long-term options for the legal education for lawyers, judges, court and para-legal personnel as well as the public and which develops an implementation plan for appropriate interventions;
- an analysis of the Constitution and existing legislation including recommendations for protecting constitutionally defined rights; and
- a legal reform action plan which identifies the number and types of laws which need to be drafted or amended, develops a technical assistance plan to meet legal reform requirements, and provides a model for assisting with the revision and drafting of the legislation.

As a first step in achieving the purpose of the project, the Mission requested that Checchi and Company Consulting, Inc. ("Checchi") provide it with consultant services under IQC No. AOJ-00542-1-00-2006-00. In response Checchi supplied three consultants: one to prepare the legal sector survey; one to analyze the needs for new and reformed legislation and to prepare an initial action plan to address those needs; and one to assess the training

needs of the justice sector and prepare options for meeting those needs as well as an initial action plan to carry out the recommended approach. The consultant who prepared the legal sector survey was in Mozambique for the period May 4-28; the other two consultants were in Mozambique for the period May 3-July 3, 1992. Each consultant prepared a separate report copies of which follow this summary. The methodology used by the contractor included: a review of the GRM, of U.S., and other donor documents, interviews with GRM and U.S.G. officials and private sector persons, analyses of data, site visits, observation of court proceedings in sessions, visits to training courses, and roundtable discussions with students. Attachments are included in the individual reports listing the persons contacted and documents consulted.

This report summarizes the content of those three reports. All the reports were submitted to the Mission in draft for its comments. The final version of the reports take those comments into account.

II. CURRENT SITUATION OF THE JUSTICE SECTOR

Legal System:

The Government of Mozambique (GRM) has adopted policies aimed at increasing the role of private property and of private organizations in the life of the country, strengthening the rule of law, and adopting a multi-party system as well as other measures to support the democratization of public life. The 1990 Constitution includes the standard basic rights familiar to the developed, western world. It establishes an independent court system and an autonomous Attorney General. However, it leaves the implementation of the provisions of the Constitution to future legislation. It also continues in effect the Portuguese law from the colonial period which was applicable to Mozambique to the extent that such law is compatible with the Constitution and the legislation passed since independence. The Portuguese legal system and its institutions belong to the traditions of the civil law countries, but it is considered one of that tradition's most complicated, formalistic and archaic varieties. There has been little legislation passed since independence in 1975. Thus, there is a great need for the preparation of new legislation to implement the provisions of the Constitution and to provide a modern legal structure on which a market economy and multi-party democracy can be based.

Corpus of Legal Professionals:

There is a severe shortage of legally trained professionals in Mozambique. There are approximately 100 fully titled lawyers in the country compared to an estimated need of over 800. Of those lawyers only 56 are registered to engage in the private practice of law. The rest hold government or judicial positions or work full time for private organizations. The only law school in the country graduates only approximately 40 lawyers a year. In addition there are approximately 50 persons (judicial technicians) with a basic degree in law

(Bachelor) from the university and 30 to 40 persons (judicial assistants) who have received some specialized training in the law in addition to their primary or secondary level education.

Ministry of Justice:

The Ministry of Justice (MOJ) has been the traditional leader of the justice sector in Mozambique. With the recent removal of the court system and the office of the Attorney General from its responsibility, the MOJ now is responsible for arranging training for the personnel of the justice sector's organizations, for conducting research on topics of interest to the sector, and for drafting reformed and new legislation for the government to propose to the National Assembly. The MOJ also oversees the operation of the prison system, the system of the registries and notarial offices and the National Institute of Judicial Assistance (INAJ) which is responsible for organizing and supervising the provision of legal services and civic education to the public.

The MOJ is not adequately staffed to perform its responsibilities. It has on its staff only eight fully titled lawyers (four of whom are part-time), and 14 judicial technicians. Its department of research and legislation consists of only one lawyer and two students. INAJ's staff consists of a central office of two part-time lawyers, two full-time judicial assistants and seven administrative staff people, while its provincial level offices have some 30 to 35 judicial assistants. The system of registries and notarial services is more generously staffed. None of the departments or dependencies have in place the type of support and control mechanisms which are needed.

Regular Court System:

The independent court system is organized on a traditionally hierarchical pattern. At the bottom are 118 District Courts with limited penal and civil jurisdictions within their geographical areas. Next are the 11 Provincial Courts with civil and penal jurisdiction within the Province over all cases not reserved to the District Courts and the Supreme Court. They also are the courts of appeal from those District Courts in their respective Provinces. At the top is the Supreme Court which is responsible for the operation of the whole court system; receives appeals from the Provincial Courts; and has trial jurisdiction in cases involving high government and judicial authorities. The Constitution also calls for the establishment of an appellate review level between the Provincial Courts and the Supreme Court and of a Constitution Council, apart from the Supreme Court, to decide on the constitutionality of the legislation and government decrees. Neither of these entities have been created. In the interim, the Supreme Court is performing those functions.

The courts consist of professional judges who are to be fully titled lawyers enjoying a judicial career and of judges who are to be elected by national, provincial and local legislative bodies. Current elected judges were chosen by community and mass organizations. These elected judges are to participate only in the finding of facts, but are

entitled to vote on the decisions reached by the courts on which they serve. Since the current elected judges are not compensated for their time it has become increasingly difficult to assure their consistent availability when needed. Because of the shortage of lawyers only 17 of the 50 authorized professional judgeships on the Provincial Courts are filled by lawyers, and none of the 120 authorized professional judgeships in the District Courts are filled by lawyers. Half the provincial, professional level judgeships are vacant with the balance being filled by judicial technicians. At the District level most of the professional judges have only a grade school education. Furthermore, the court system does not have enough authorized judgeships to permit it to use multi-judge courts as it would prefer.

The court system provides little support to the work of the judges. There is a small library in the Supreme Court, but it is not well organized and provides no outreach to the rest of the system. Information about the law is not supplied to the judges or the public, and information concerning the operation of the courts themselves is not collected and analyzed in order to guide the work of the system. The supervision of staff and the preparation of budgets is very decentralized--largely done on a court by court basis. The implementation of the career system is just a few months underway, and some of the key entities involved are not yet functioning. Only a very limited amount of training is being provided to some of the District Court judges.

Specialized Courts

In addition to the regular court system there are judicial type entities with special jurisdictions. They include military courts, labor courts, fiscal courts, customs courts and the Administrative Court. The fiscal and customs courts are entities within the Ministry of Finance staffed with ordinary employees of the Ministry. Their decisions are appealable to the Administrative Court. This institution also acts as the auditor for the whole government; reviews all personnel actions of the government which involve the commitment of funds; and hears, as both trial and appellate court, all cases involving government contracts. Its decisions are not appealable. Because of very limited staffing and lack of organizational structure the Administrative Court has been all but inactive for several years.

Community Courts

Also apart from the regular court system are some 880 community courts staffed by non-professional, elected judges. These courts handle family matters, small disputes and misdemeanors which merit a penalty of no more than 30 days' community labor. Their use is voluntary and their decisions may be ignored. In many respects they are similar to conciliation centers. However, their work appears to be useful since they keep many cases out of the formal system, use local languages as well as Portuguese and provide a way of including local customs and principles of fairness in the resolution of problems. They are to be supported by the provincial governments.

Office of the Attorney General

The Office of the Attorney General is an autonomous entity which represents the government in legal matters, exercises the prosecutorial function and is to assure that all government personnel and agencies as well as the courts observe the law. It also performs many of the responsibilities under the criminal procedures code which in other civil law jurisdictions are placed in the investigating judges--for example, it supervises the collection of evidence by the police and makes initial decisions concerning the suitability of a case for trial. The Office of the Attorney General is organized on the central, provincial and district levels as is the court system since its representatives participate in the work of the court system at each of those levels. Its staffing is even less adequate than that of the court system. There are only 54 representatives at the district level none of whom are lawyers and most of whom have only a grade school education. There are only 10 representatives at the provincial level, and four of them also are acting at the central level since only two persons at that level have been appointed. Of the authorized administrative staff of over 2,000 only 40 to 50 persons are in place. No training has been provided to the personnel. The career system for the organization has not been prepared, and the support system for the work of the agents suffers from the same weaknesses as in the case of the court system. In addition, the work of the Office of the Attorney General faces two problems intrinsic in its nature--how to be truly autonomous although the Attorney General serves at the pleasure of the President of the country and how to combine responsibility for overseeing the legality of all government actions while being responsible for carrying out such major government actions as those involved in the prosecutorial function.

Bar Association

Currently all legal services to the public are to be provided by legal personnel registered with INAJ and are to be obtained and paid for through INAJ. The GRM is preparing a statute to change this system by creating a Bar Association of private lawyers who would oversee the providing of legal services by those private lawyers. However, fees to be charged for the services would continue to be regulated by the MOJ and the MOF, and INAJ would continue to be responsible for supporting legal services for the needy and for administering the provision of legal services by judicial technicians and judicial assistants who would not be eligible to be members of the Bar Association. The Bar Association also would be a channel for overseeing the one year apprenticeship requirement for members and for carrying out general service functions by and for the legal profession.

Education and Training

There is only one law school in the country. It reopened in 1988 after being closed by the government for five years. It provides a five year program leading to the degree of licenciado or fully titled lawyer. The curriculum is fixed. There are no electives. The faculty consists of eight full time and 31 part time teachers. All are lawyers. Three of the full time and eight of the part time teachers are Portuguese. The law school is aiming to

have a permanent faculty of 19. There is an entering class of approximately 100 students some two-thirds of whom hold jobs as well as study. The drop-out rate is such that it is expected that only 40 students per year will graduate.

Neither the law school nor INAJ provides continuing education for lawyers apart from occasional lectures by visiting lawyers from abroad. In-service training for the personnel of the justice sector organizations has been limited to instruction for some of the district level judges. The training consists of remedial work on primary and secondary level topics and the presentation of the texts of the basic codes. In order to strengthen a program of in-service training the MOJ proposes to create a Center for Judicial Studies which would organize training for the sector's organizations--probably using funds from each of them.

III. PLANS OF GOVERNMENT OF MOZAMBIQUE AND ASSISTANCE AGENCIES

The GPM does not have a justice sector strategy or development plan nor fully worked out projects for improving the performance of the sector's organizations. However, in connection with the preparation of a World Bank project a workshop was held in February 1992 at which the major sector organizations presented their needs and requests. The primary emphasis was on the provision of education and training--both in-country and abroad and both within the law school and through the proposed Center for Judicial Education. Secondary emphasis was placed on the preparation of new and reformed legislation and the strengthening of the system for collecting, analyzing and distributing information about the law and the operations of justice sector organizations.

To date there have been only relatively minor amounts of assistance to the justice sector from external donors. USIS has supported a few observation trips to the US for judges and for agents of Office of the Attorney General. The US Embassy has provided support to the in-country training of district level judges mentioned above. Portuguese institutions have supplied several visiting teachers for the law school and have received a few representatives of the justice sector organizations for long term legal training in Portugal. The most active support has come from the Danish aid program, which undertook a \$2.5 million program in 1991. It will provide major support for the development of the law school; assist INAJ in setting up more provincial offices and expanding its civic education program; and assist in the strengthening of the availability of legal information by working with the Supreme Court, the law school and other interested entities. Although behind its original schedule, the program is getting underway.

Several donors are considering increasing their participation in the work of the justice sector. The Swedish government is supporting an analysis of the sector's needs. A.I.D. set aside \$500,000 of its current Democratic Initiatives project for support of the justice sector, and has begun by supporting the consultancies leading to these reports. However, the most important activity being planned is the World Bank's Capacity Building project under which \$6.0-\$7.0 million is to be provided for work with the justice sector. A Mozambique Working

Group was formed to coordinate the preparations for the project, and the Bank staff has encouraged all the external donors to adjust their planning to be supportive of the project's program. The project, which is to get underway in 1993, will place major emphasis on improving education and training. It will support the preparation of a justice sector strategy and annual operations plans which can be adjusted to meet circumstances.

IV. A.I.D. LEGAL SECTOR PROGRAMMING

A. Major Issues to be Addressed

There are several positive aspects to the conditions facing the justice sector. The organization of the sector's entities is so incipient that there are no entrenched arrangements which need to be overcome. There is a genuine intention to strengthen the role of the private sector in the economic and legal life of the country. There is acceptance of the key principles of the independence of the courts, the autonomy of the Office of the Attorney General and a career status for professional judges and prosecutors. There is some experience with oral procedures which can be built on. The small number of lawyers could make achieving sector wide coordination easier. There are innovative approaches which may prove effective in improving the performance of the justice sector--particularly the use of elected as well as professional judges on all courts and the system of Community Courts.

Problems and Needs

There also are very serious problems and deficiencies in the justice sector. They have been mentioned in the above description of the current situation of the justice sector. Those deserving particular emphasis are the following:

Shortage of Trained Personnel: There is a serious shortage of trained personnel which impedes the operation of all the sector's institutions. Moreover, the scarcity of lawyers is aggravated by the complicated, formalistic nature of the legal system which is wasteful of lawyers' time; by the tendency to view lawyers as being needed for positions whose responsibilities might well be met by lesser trained professionals; by the apparent incapacity of the law school to graduate more than 40 lawyers per year; and by the emphasis being placed on restoring the prestige of the legal profession.

Limited Use of the Formal Justice System: There is no strong tradition of using the formal justice system to resolve disputes. The majority of the population do not feel comfortable using Portuguese. Customs and the sense of fairness differ greatly among the various regions of the country. People often turn to traditional leaders (such as chiefs and religious elders) to settle disputes. Because of the poor communications of the country the courts are not very

accessible. Civic education--including that concerning the law and the use of the justice system--has been very limited.

Weaknesses in the Independence of the Court System and the Autonomy of the Office of the Attorney General: There are serious weaknesses in the independence of the court system and the autonomy of the Attorney General. There is a tradition of a strong executive. The courts and the Office of the Attorney General were removed from the MOJ only within the past five years, and national and provincial executive branch leaders continue to try to intervene in the decisions of the justice system. Indeed, the Attorney General serves at the pleasure of the President of the country. Neither the court system nor the Office of the Attorney General have career systems effectively in operation, and both suffer from serious shortages of personnel. Neither prepares unified budgets for their systems and must request and receive their funds through the MOF. Both suffer from serious weaknesses in their administrative and operational support.

Disorganized Program for Legislative Reform: The program for preparing new and reformed legislation for consideration of the National Assembly is not performing well. The MOJ's unit which is in charge of research and support for the program is not adequately staffed. There is no prioritized plan of operations nor a process for consulting with groups whose interests are involved in the legislation under review. The university law school as an institution is not involved in the process.

Weaknesses in Plans for Strengthening Education and Training Programs: The law school does not prepare enough lawyers to meet the needs of the justice system and the nature of the education provided does not enable its graduates to serve in the court system and as representatives of the Attorney General without further training. However, there is no program for providing training to the persons entering the organizations of the justice sector and only a small activity for those already serving the court system. Furthermore, there is no system in place for conducting on-going assessments of the needs for such training or for evaluating the effectiveness and impact of the training which is being given.

Lack of Information About the Law and the Operation of the Justice Sector: The Supreme Court, the Office of the Attorney General, the Ministry of Justice and the law school all have libraries of legal materials. However, they are small and most of the material is old. They are not well organized, and there is no cooperation among them. The justice organizations do not provide information about the law to their personnel who do not have ready access to the libraries in the central offices nor do they systematically collect and analyze information about their operations. Computer techniques are not

being used. None of the organizations currently issue periodicals reporting on their decisions and other actions.

Limited Nature of Reforms Proposed: Although the GRM and the World Bank are preparing an ambitious program to improve the operation of the justice sector, there are aspects which deserve further consideration.

- There may well be an over-reliance on the Portuguese experience and institutional arrangements as models.
- The combination of disparate functions in the Administrative Court and the unappealable nature of its decisions may prove troublesome.
- The continued combination of the prosecutorial and government oversight functions in the Office of the Attorney General may prove too much for one organization to handle properly.
- The efforts on training and increasing staff may be too focused on the use of fully titled lawyers and thus overlook the possibility of using judicial technicians to meet some legal responsibilities over the long term and as an expediency during the transition period.
- The implications of the creation of a Bar Association and the strengthening of the private practice of law may not be fully understood, and the planned limitation of membership in the Bar to only fully titled lawyers may be self-defeating.

Lack of Absorptive Capacity: There are indications of a serious constraint on the justice sector's capacity to absorb external assistance. Few of the activities eligible for support under the protocols with Portugal have gone forward, and the program of Danish aid is suffering delays. The MOJ is not well staffed to handle the various assistance programs. Indeed, a few dedicated and talented people appear to be used for an extraordinary range of activities. Yet the World Bank project is of such a size and scope that it will increase by several times the implementation burden faced by the sector's organizations.

B. Elements of Strategy

Taking into account the conditions facing the justice sector and the plans of other assistance agencies the following are suggested as elements of a strategy to be followed by A.I.D.

- **Focus on the needs of the core justice sector institutions--of the court system, the Office of the Attorney General, the Ministry of Justice (particularly its work for in promoting the reform of legislation and perhaps in the collection and dissemination of legal information), the Bar Association and INAJ (especially in its work to provide legal assistance to the needy).**
- **Emphasize the institutional strengthening of the core justice sector organizations listed above with particular attention to their administration.**
- **Emphasize the evaluation of in-service training programs, the creation of a system for on-going assessment of needs and the preparation and modification of curriculum, and for the linkage of training plans and work on legislative reform and institutional strengthening.**
- **Support the effort to prepare new and revised legislation with emphasis on the needs of the justice sector organizations themselves and on creating a system for prioritizing the work, for consulting among the potentially affected groups and for providing training in drafting. Assure that the legislative reform effort includes planning for supportive work in training and institutional strengthening.**
- **Foster the further consideration of those aspects of the current plans for the sector which may cause difficulties and of topics not yet discussed. Topics of that nature include:**
 - **The relationship of the Constitutional Council and the Administrative Court to the regular court system.**
 - **The combination in the Office of the Attorney General of the prosecution and government oversight functions.**
 - **The use of judicial technicians and other legally trained persons with less than a full degree to perform functions currently thought to require the services of a lawyer. This should include a rethinking of the needs of the system of Registries and Notarial offices.**
 - **Alternatives for providing legal assistance to the needy.**
 - **The role of the Bar Association as a service organization.**
 - **Techniques of implementing the prosecutorial function including the topic of prosecutorial discretion and oversight of the police.**

- Conciliation and arbitration techniques for use by the court system.

- Foster consideration of the use of techniques and models apart from the Portuguese tradition
- Focus on further analytical work and the trial and evaluation of specific activities, leaving for later the decisions on whether to implement a traditional A.I.D. project.

C. Suggested Activities for A.I.D. Support

Over the next year and a half A.I.D. might support the following activities to strengthen the justice sector in Mozambique.

In-country Consultations and Seminars

Priorities should be set among the topics listed above and persons experienced in those topics should be brought to discuss them with representatives of the legal and political leaders of the country. The discussions should lead to as concrete conclusions as possible concerning further action. A U.S. intermediary organization could be used to carry out the effort, but it should use persons both from the U.S. and from civil law countries.

Institutional Analyses and Design of Activities for Improved Administration

Technical assistance could be provided for a thorough analysis of the administrative operating needs of the court system and of the Office of the Attorney General. The U.S. experience in improved court administration and the operation of prosecutorial offices can be well utilized. The outputs should include specific recommendations for changes and for further activities. Early implementation of those activities might also be supported.

Design and Implementation of the Training Program

Technical Assistance should be supplied to:

- evaluate the in-service training activities which have been conducted to date;
- design a system for performing on-going training needs assessments of the staffs of the core sector institutions;
- design curricula and instructional materials which respond to the results of the evaluations and the needs assessments;

- design the organizational structure and operating standards for the proposed Center for Judicial Education; and
- design training programs to carry out the recommendations of the in-country seminars.

For further elaboration of these suggestions see part V below.

Research and Reform of Legislation

Technical Assistance should be supplied to create a system for conducting the research, the consultation and the capacity for legal drafting which will be necessary for the proper conduct of the legislation reform effort which is likely to continue for the indefinite future. Attention should be placed on strengthening the institutional capacity of the MOJ and on achieving coordination among that organization and the work of the university and, potentially, the Bar Association. Priorities for the legislation to be addressed and suggestions for the approaches to be taken are given in part VI below.

Design and Implementation of Activities to Carry Out the Results of the In-Country Seminars

The conclusions and results of the in-country seminars suggested above may well need outside assistance for their implementation. Should other agencies not have plans to do so it would be useful for A.I.D. to do so, at least selectively, in order to assure that the investment in the analytical effort is not wasted.

Design of Follow-on Project

If A.I.D.'s experience in carrying out the above activities is positive and sufficient progress is made on starting up the World Bank project and further implementing the Danish aid project, it could be appropriate for A.I.D. to prepare a project as a vehicle for increasing the level of its assistance to the justice sector. In anticipation of that task A.I.D. might support the collection of key baseline data in connection with the creation of a system for the collection and management of information about the operation of the justice sector's institutions.

V. LEGAL EDUCATION ASSISTANCE

The report of the Legal Education and Training Consultant presents prioritized needs assessments and plans; a description of a proposed Center for Judicial Education (CEJ); United States organizations suggested to participate in the program; and specific training activities for possible A.I.D. support. The contractor spent considerable time reviewing other donor programs and has also made two visits to the U.S. Embassy sponsored district

level judges training program in Matola. Visits included four hours of observation of classroom instruction and a round-table discussion with three students from the northern, central, and southern parts of the country.

Options:

The report discusses the following four options in the area of training:

Stay out of the justice sector unless some difficult reforms are to be instituted by the justice sector

One option for A.I.D. is not to become involved in the justice sector since so much is being planned by other donors and several important aspects of the overall program present unresolved issues discussed in part IV above. However, there are some forces at work which could have a positive impact on the sector and training is a high priority. Thus A.I.D. should remain apart from the effort only if it is clear that its contribution is not needed or will not be well used.

Direct assistance to the World Bank's planned project

This option amounts to filling in gaps in the resources available to support the field program prepared by the Working Group for the planned World Bank project. The program has several issues or problems still to be overcome.

- . Its estimated costs are high;
- . The proposed training programs lack prioritization;
- . The overwhelming emphasis is on training lawyers;
- . The plans for CEJ need more development;
- . There is a need for more technical assistance than is planned;
- . Key personnel to manage the program are not yet appointed.

In short, the proposed program as outlined attempts to train a large number of individuals at a relatively high cost. There are many areas to be decided in the near future. Further analysis and careful planning are needed. A.I.D. should not attempt to fill the funding gaps in the planned program at least until these aspects of the program have been addressed.

Provide limited technical assistance and training for the remainder of 1992 and into early 1993

The World Bank's project, along with other donor activities, provides a significant set of inputs for the justice sector beginning in 1993. Meanwhile the A.I.D. Democratic Initiatives project would be the appropriate modality to provide selected technical assistance and training during calendar year 1992 and into early 1993. The report suggests that A.I.D. utilize resources from this project to assist the GRM to prepare the systems to use the World Bank resources when they become available and to support some limited training activities as a way of testing the elements of the system.

Depending on the success of near term activities, move to institutional support in 1993-4.

The justice sector leadership is highly motivated and desires to implement its program. When the A.I.D. inputs are in place and evaluation of accomplishments and/or progress is finished, then A.I.D. may wish to consider further support to training for specific and high priority target groups, such as district level judges and prosecutors.

Priority Activities

The report identifies the major training activities that should take place for the program to have lasting impact. It discusses each area and suggests some responsibilities for different organizations. The contractor suggests that A.I.D. can be the catalyst to start some of these programs but that considerable support will be required from the GRM and other donors. The activity areas, with suggested sponsors in parenthesis, are:

- Structure an on-going training needs capability which meets many reforms and changes (CEJ);
- Train trainers (CEJ);
- Suggest needs for training materials, information, and equipment (CEJ);
- Select training materials (CEJ);
- Develop curricula and course outlines (CEJ);
- Conduct programs for legal professionals without professional training (CEJ, INAJ and Law Faculty);
- Conduct Provincial and district level training for persons delivering justice services (CEJ);

- Relate customary and civil law in developing countries (Law faculty, MOJ, A.I.D., and other donors);
- Implement evaluation system for training provided (CEJ); and
- Identify non-formal education interventions to promote public awareness of legal system (MOJ, MOE, INAJ, DANIDA, and A.I.D.).

Center for Judicial Education

A major part of the analytical preparation would be focused on assisting the MOJ to establish the CEJ. The outputs to be produced are expected to be:

- yearly training plans setting out the number and types of courses to be sponsored;
- standards for the selection of persons to participate in the courses;
- training methodologies for each type of training event;
- curricula and instructional materials for the courses;
- 30 training events for 560 plus trainees including training of trainers;
- an evaluation of the utility and impact of each type of training event;
- final plans, including specifications for the preparation of selected physical plant; and
- final plans for equipped facilities for the CEJ.

Target Groups

As for any direct training, the following would be the priority target groups starting with the most important. Higher priority has been given to poorly qualified and trained groups providing justice services at the grass roots levels. Thus, priority is given to the following personnel at that level:

- District level:
 - Current judges and representatives of the Office of the Attorney General,
 - New administrative support staff of the Office of the Attorney General.

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- Administrative support staff of the courts,
- New judges and representatives of the Office of the Attorney General.
- Second priority is given to the same types of personnel at the provincial level.
- Third priority is given to the professional personnel of the Registros and Notariados. This is a high Mozambican priority because of the role of these offices in the legal system. Then too when a district judge is not available, the local conservador can take his place.
- The fourth priority would be the personnel of the Administrative Court.

These last two priorities are less because the institutions involved are modeled on those in Portugal which probably will provide them the training.

Suggested Inputs

The contractor recommends modest amounts of A.I.D. technical assistance (TA) and participant training. This assistance is for the purpose of facilitating the establishment of the CEJ and training its staff. Depending on the outcome of these efforts, A.I.D. should in the future be in a position to provide some direct training assistance to the target groups mentioned above, but such training is not part of the immediate plan set forth below. In addition, no assistance is contemplated under this plan for the Eduardo Mondlane University, since the level of assistance to be provided by other donor agencies is considerable.

Technical Assistance

- California Judicial Training Center - 2-3 months TA.
- CEJ - Portugal - 2-3 months TA funded by Portugal or the World Bank.
- U.S. or third country TA to train trainers - 12 months.

Suggested Types and Sources of Training

- California Judicial Center - 3 CEJ staff members (2 months each) A.I.D. funded.
- CEJ/Portugal - 3 CEJ staff members (2 months each) Portuguese or WB funded.

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The contractor has suggested the following A.I.D. phased inputs by the year and type of input.

A.I.D. INPUTS
\$(000)

Year and Phase

<u>Type of Input</u>	<u>Phase I (1992)</u>	<u>Phase II (1992)</u>	<u>Phase III (1993)</u>	<u>Total</u>
Training	50	-	100	150
TA	55	240	-	295
Totals	105	240	100	445

Training Organizations

The report suggests some 13 U.S. organizations to help provide technical assistance, develop U.S. university linkages and information exchange mechanisms. It gives the contact person, address, and telephone number for each organization, along with a brief description of the services each can provide.

VI. LEGAL REFORM ASSISTANCE

The Legal Reform Consultant spent two months in Maputo gathering information on legal reform needs and priorities from the Ministry of Justice and different sectoral Ministries, and identifying legislation and legal revisions required by the new Constitution of Mozambique. She also assessed the type and level of technical assistance available from other sources, determined training and resource material needs in connection with necessary legal reforms, and discussed the interface between the civil law and customary law systems with particular reference to family law matters. Based on the data gathered during the consultancy, a Legal Reform Action Plan report is presented, which analyzes deficiencies and needs in the Constitution, the existing corpus of statutes and regulations and in the overall system for the development and drafting of legislation in Mozambique. The report presents a prioritized list of recommended actions, with terms of reference for the carrying out of each element of the plan.

Analysis of the Law-Making Process

Under the current system, draft legislation originates in the competent ministry or commission, then is referred by the MOJ to the inter-agency Working Group for review and revision and then to the Council of Ministers for final review. The development and drafting of legislation is coordinated by the MOJ's Center of Investigation and Research (DIL).

The DIL manages the process of generation of new laws, and as part of that process creates compilations of statutes and jurisprudence, and produces studies of selected areas of law to facilitate the development of new laws. DIL is understaffed, short of resources, and overextended. Further, the GRM does not have, nor does it presently encourage the development of, professional legislative drafters.

While Portugal, Denmark and the World Bank have committed some resources for the purposes of increasing the resources and capacity of DIL, USAID could play a constructive role in providing assistance in the training of competent legislative drafters. The International Law Institute, a training institute in Washington, D.C. offers courses to jurists from developing countries in the design and drafting of new laws. ILI would be an ideal resource for training in this area. Also, USAID can work with other U.S. and international donors to assist DIL with the acquisition of relevant legal texts and reference materials for DIL's use in the development of new legislation.

Analysis of Selected Laws and Suggested Revisions

Based upon the terms of reference as well as the Legal Reform Consultant's findings from relevant officials as to priority areas for legal reform, the report presents an analysis of laws and related regulations and procedures in need of revision. First, a general assessment was made of needs for legal revision arising from inconsistencies between

existing statutes and the provisions of the new Constitution. These needs include revisions or new legislation in the areas of family, administrative, labor, election, and local government laws. Fifty-one specific reforms were identified and are presented in an annex to the report.

Next, selected laws were analyzed from among the corpus of statutes inherited from Portuguese colonial rule. These analyses are summarized as follows:

1. ***Family Law:*** In this area, several statutory provisions were found to require revision due to their inconsistency with the constitutional requirement of equal treatment of women and men under the law, as well as other provisions. Further, an overview of the systems of traditional and religious family law revealed the need for research into practices under those systems, and their interface with the state legal system in areas such as civil marriage registration, in order to help mesh the local rules and systems with constitutional provisions and a state code of family law.
2. ***Code of Civil Procedure:*** Research revealed a number of problems in this area, including excessive formalism and inflexibility, outdated provisions, and lack of mechanisms allowing for free flow of information or informal dispute resolution.
3. ***Commercial Law:*** This code, which is essentially the Commercial Code of Portugal of 1888, has not been revised in light of present-day commercial needs. Needs for revision have been identified in the areas of commercial paper, sales of goods, insurance, and other areas. In addition, the report discusses the problems that were discovered in the Registration Codes and the practices under them, such as excessive documentation requirements, outdated methods and technology, and limited registration capacity. These problems adversely affect commercial transactions and other legal matters.
4. ***Criminal Law and Procedure Codes:*** The Penal Code was analyzed and found to contain several provisions that require revision due to their inconsistency with the Constitution. The Code of Criminal Procedure, which dates from 1929, was also analyzed. Several problems were revealed, such as lack of clear provisions on the duties of the police and the rights of the accused, overbroad provisions on preventative detention, and inadequate safeguards with respect to methods of interrogation.

A number of post-independence laws were also reviewed. The analysis is summarized as follows:

1. ***Organic Law on the Attorney General's Office:*** The legislation in this area is also discussed in the Legal Sector Survey report. The Constitution requires

that this field be controlled by a specific law, and the 1989 legislation in this area is incomplete. A new or revised law may be needed to control the structure, duties, and procedures of the Attorney General's Office and its staff.

2. ***Environmental Laws:*** This area of law was analyzed in some detail in the report, as a result of needs articulated to the Consultant by relevant officials. While a National Commission on the Environment exists and a new Environmental Law is being drafted with the assistance of UNDP, a number of procedures and institutions essential to environmental protection are either weak or non-existent. There is particular need for the development of Environmental Impact Assessment procedures and water purity standards. In addition, the report calls attention to gaps and inconsistencies in some areas of law and regulation affecting this field, such as the Water Law, the laws governing land tenure and use, and tax rules. In addition to the consultancies discussed below, the report suggests that AID, in cooperation with other agencies such as the U.S. Environmental Protection Agency, make available to DIL and other relevant actors in the Government of Mozambique technical resource material on aspects of environmental protection.
3. ***Press and Labor Laws:*** In response to requests by relevant officials, the Consultant reviewed legislation governing the press and labor relations for consistency with the Constitution as well as internal consistency and relation to economic and social needs.

Priority Action Recommendations and Terms of Reference

The Legal Reform Action Plan report concludes by presenting priority action recommendations, with actual terms of reference included in an appendix. These recommendations reflect both the priorities articulated by GRM officials and the assistance already being provided by other donor agencies in selected areas of legal reform. The recommendations are as follows, in order of priority:

1. ***Developing Capacity for Legal Drafting:*** USAID should assist in providing a course on legislative drafting for at least two GRM attorneys, perhaps DIL staff members. This could be done under the auspices of the International Law Institute. This training activity could later lead into the development of a local training course in legal drafting, perhaps at the Eduardo Mondlane University.
2. ***Family Law Revision:*** USAID should assist GRM in reform in this area by providing two consultants. One consultant, an expert family law attorney, can review the statutes and assist DIL with developing a new family law code. The second consultant, a legal anthropologist, can review the decisions and

procedures of the *Tribunales Comunitarios* in the family law area for the purposes of assisting with the overall development of the family law code, including marriage registration procedures. The feasibility of the latter will depend on changing conditions outside Maputo. These consultancies may need to await the outcome of the current political debate on family law.

3. ***Further Activities:*** To the extent possible, USAID should provide technical assistance in the development of the following areas:
- Preparation of a new Penal Code
 - Preparation of a new Code of Civil Procedure
 - Drafting or revision of Commercial Laws governing commercial paper, sales of goods, and insurance practices, as well as assistance in reform of procedures for registers and notaries.
 - Preparation of a statute to create regulations to govern a Bar Association
 - Drafting Environmental Impact Assessment requirements and new Water Standards.

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LEGAL SECTOR SURVEY REPORT

Prepared by:

John Oleson

October 21, 1992

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ANNEXES:

1. Persons Interviewed
2. Documents Consulted

I. INTRODUCTION

In 1991 the A.I.D. Mission to Mozambique entered an agreement with the Government of Mozambique (GRM) to carry out a Democratic Initiatives Project. The project is to provide rapid and flexible assistance to the GRM and non-governmental entities in order to facilitate the transition to democracy and to begin to address some of the immediate problems caused by the severe governance constraints that have been identified and to allow the USG to continue to deepen its own understanding of governance problems in Mozambique should it be decided to support project interventions with longer-term objectives at a later date.

The project included as one of its purposes the institutionalization of an independent judiciary as part of the overall effort to establish the rule of law. As a step in achieving that purpose, the Mission requested that Checchi and Company Consulting, Inc. "(Checchi)" provide it with consultant services under IQC No. AOJ-00542-1-00-2006-00 to "undertake a sectoral needs assessment to determine legislation, judicial and other legal system requirements for strengthening the effective improvement of legal rights in Mozambique." The assignment specifically was to:

- assess the relationships between the executive branch and the judiciary and suggest measures to promote the independence of the judiciary;
- analyze the structure of the legal system of justice in Mozambique and make recommendations for its development or revision.¹

The consultant provided by Checchi to perform the requested services spent the period May 4-28, 1992 in Mozambique. He conducted interviews with some 42 representatives of the GRM, the USG, other cooperating agencies and private persons knowledgeable about the operation of justice sector. He also reviewed such background material as was available concerning the structure and operation of the justice system. The consultant also spoke with representatives of the World Bank in Washington concerning their observation about the legal sector of Mozambique. A list the of persons interviewed and the documents consulted is given in Annexes 1 and 2. This report provides the observations and suggestions of the consultant.

¹ The original scope of work also called for the assignment to include a preliminary training needs assessment, but it was decided that that work would be done more appropriately by the person who was to prepare the legal education action plan. That person was in Mozambique at the same time as the consultant working on the sector assessment.

The work of the consultant was greatly facilitated by two reports which had been produced in 1991 by Ann Williams and Beverley Carl. The former is a member of the A.I.D. staff who prepared analyses of the 1990 Mozambique Constitution and a Technical Analysis of the Mozambique Legal System for the Mission's Project Paper. The latter is a legal consultant to the World Bank who prepared a report on the Mozambique legal system in connection with the preparation of the proposed Capacity Building Project of the World Bank.

In conducting the assessment, the consultant tried to focus on what was actually taking place rather than on what the laws and formal documents stated was to take place. This proved to be difficult to carry out for several reasons. The time available for the collection of opinions and data was relatively short; the focus placed great importance on in-depth interviews and these proved difficult to arrange and to carry out because of the schedule of those relatively few people who were knowledgeable; reliable data (especially quantified data about the operation of the sector's institutions) is either non-existent or difficult to obtain; and there is a tendency on the part of Mozambican officials to describe things as they plan them to be in the future rather than as they are today. As a result, the description in the report must be considered approximate; and should be subject to refinement (and perhaps correction) in the process of the future analytical and design work which is suggested.

Given the constraint of time, the consultant limited his attention to the core institutions of the justice sector rather than attempting to address the operations of the whole legal apparatus of the country. Thus, the report includes discussions of the court system, the Office of the Attorney General, the Ministry of Justice (and its dependencies, the Registries and Notarial Officers and the National Institute of Judicial Assistance), the university's law school and the private bar. It does not try to analyze the operations of such administrative units as the customs and fiscal courts, the military courts and other specialized judicial units, or to address the role of lawyers in the work of the overall public sector. While pursuing the broader scope would have been desirable, the A.I.D. Mission agreed that it was preferable to have a more thorough review made of the core justice sector institutions.

II CURRENT SITUATION OF THE JUSTICE SECTOR

A. Constitution and Legal Framework

The Government of Mozambique (GRM) has adopted policies aimed at increasing the rule of private property and private organizations in the life of the country, at strengthening the rule of law and at adopting a multi-party system as well as other measures to support a process of democratization of public life. A major pillar of this policy is the Constitution of November 1990 which incorporates several basic rights well known in the western world. Arrests may be made only according to law. There is a presumption of innocence. Actions cannot retroactively be made crimes. Accused persons have a right to defense and legal assistance. Preventive detention may be used only in cases provided by law. Persons in custody have to be brought before judicial authorities within the periods fixed by law. The writ of habeas corpus is provided. The state is liable for the illegal acts of its agents. Fundamental rights may be suspended only under conditions set forth in the Constitution itself. The Constitution also establishes an independent judiciary whose decisions are to take precedence over the decisions of other authorities. The Constitution calls for the creation of: the Supreme Court and other courts of justice, the Administrative Court, military courts, fiscal courts, labor courts, customs courts and maritime courts. It also provides for an autonomous Attorney General who will report to the President and be responsible for the Public Prosecutors' Office.

Despite these provisions of the Constitution, the legal system in Mozambique continues to be the subject of criticism. The shortage of trained lawyers often is cited as a condition making the protection of rights difficult. The main source of abuse of the fundamental rights appear to be the military forces despite the fact that the jurisdiction of military courts over civilians was abolished and the armed forces have no powers of arrest over civilians. The Constitution leaves to the passing of laws the implementation of its principles and basic structures, but few implementing statutes have yet been passed. Furthermore, the Constitution provides that Portuguese laws which were applicable to Mozambique at the time of independence remain in effect unless they are in conflict with the Constitution or laws passed since independence. However, neither the Constitution nor the implementing laws adopted to date specify what those conflicts are. As a result, the substantive and procedural law applied by the justice system is basically that introduced during the Portuguese colonial administration. That body of law and procedures is part of the civil law tradition, but is considered to be one of its more complicated, formalistic and archaic varieties. Its nature exacerbates the difficulty facing the study and practice of law and makes more serious the shortage of information available in Mozambique about the law.

B. Structure and Operation of the Ministry of Justice

1. Scope of Responsibilities

The Ministry of Justice (MOJ) has been the predominant institution in the legal sector since the achievement of Mozambique's independence in 1975. This role was formalized in Presidential Decree #69 of 1983, which called for the experience of the popular justice units, which had been maintained by the FRELIMO party, to be used as a model for the justice system. That Decree placed in the Ministry of Justice responsibility for:

- operating the court system (including the Supreme Court);
- promoting reforms in legislation;
- registering legal acts and the identities of citizens;
- assuring the legality of government actions;
- acting as the government's lawyer;
- assuring the legal defense of the population;
- recruiting jurists of correct social views;
- supervising the prisons; and
- providing information about the laws required by the personnel of public sector organizations and by the public.

In 1985 the executive branch issued Diploma Ministerial No. 42 which set out the structure of the MOJ. The responsibilities were grouped into five major areas: judicial, registry of judicial acts, prisons, religious affairs and research and legislation. The Diploma provided for Directories or Departments for each of those responsibilities except for the judicial, and added Departments of Personnel and Training and of Administration and Finance. The former department is responsible for providing personnel guidance and training for all the public organizations in the justice sector while the latter department deals with the internal operations of the MOJ. In 1986 the National Institute of Judicial Assistance (INAJ) was created and placed within the MOJ. (See Sub-part (3) below.) Subsequently it was decided to remove from the MOJ the responsibilities for the operation of the court system and for the Office of the Attorney General (See sub-parts C and D below.)

The Diploma also created three committees to participate in the work of the MOJ. The first is the Consultative Committee consisting of the Minister, the Attorney General, the President of the Superior Appellate Court (which has yet to be created), the chiefs of the MOJ's Directories and Departments and any others appointed by the Minister. This committee is to study the decisions of the party and the government to assure their justice and legality and to analyze and give opinions on the operation of the Ministry. The second is the Coordinating Committee consisting of the same members as the Consultative Committee but also including the Presidents of the Provincial Courts and the provincial representatives of the MOJ. This committee is to assist in planning, coordinating and

controlling the work of the Ministry. The third is the Technical Committee consisting of persons named by the Minister. Its responsibilities are to analyze special questions and to give its opinions and guidance on priorities to the Department of Research and Legislation.

Today the MOJ has primary responsibility for the developing of new legislation on behalf of the government, the organizing of pre-service and in-service training for the public entities operating in the justice sector, and the operation of the National Directorate of the Registries and Notarial Services and of INAJ. The MOJ also has a general responsibility for encouraging and coordinating the work of all the entities in the justice sector such as that of improving the availability of legal information, and it is acting as the channel through which international donors deal with the sector's organizations. The MOJ also has responsibility for the operation of the Prison Administration, but that function is outside the scope of concern of this assessment.

In Diploma No. 66 of 1987 the MOJ established the general functions of, and the requirements for, the categories of positions in its Departments, Directorates and the Service of Registries and Notaries. (The Diploma did not cover INAJ or the Directorate of Prisons). The numbers of positions in each category were to be established later and are to be reviewed annually. The salary levels for the positions are to be set jointly by the MOJ and the Ministry of Labor. Persons are to be appointed to the positions either directly by the Minister (for higher level positions) or by competitions to be organized and run by the Minister. In Diploma No. 115 of 1991 the number of positions was set at 2,376. They fall into the following major groupings:

<u>Category</u>	<u>Number of Positions</u>
• management and direction	62
• technical career, general	58
• technical career, specific (largely registry and notarial)	728
• administrative career (includes 563 trainees)	637
• secretarial career	431
• other occupations	438

At present the MOJ is preparing draft internal regulations to modify this Diploma to reflect changes in the structure of the MOJ subsequent to its issuance and to address the many aspects of the operation of the MOJ which were not adequately covered in that Diploma.

In seeking to fulfill its responsibilities the MOJ faces several important problems and limitations. It has few professional level staff. It has only eight graduate lawyers (six of whom are advisors to the Minister), 14 judicial technicians and two university graduates and three undergraduates in disciplines apart from the law. It has not yet opened any of the provincial level offices which are authorized. It has not yet prepared detailed position descriptions or personnel policies and procedures. It has no system for evaluating

performance or for transferring persons from one position to another. It receives little information concerning the operation of the registries and notarial services for which it is responsible. Indeed, it has jurisdiction for disciplining only the personnel of the central department and directories. There is no development plan nor any statement of priorities for the work of the Ministry. Many of the authorized positions are not filled. (In part this reflects the fact that the list of authorized positions was not issued until the fall of 1991 and the shortage of resources to pay salaries.) Moreover, the unfilled positions include several key to management--for instance, there is no director of personnel and no head of human resources and training. The only legal library is a small one in the office of the Minister, and there is no system for providing information on the law to the personnel of the Ministry. The Consultative and Coordinating Committees are not active. The Technical Committee does function with four full-time lawyers and four part-time, unpaid lawyers from outside the Ministry.

2. Research and Legislation

MOJ Diploma of 1985 states that the Department of Research and Legislation has the following functions:

- prepare and comment on legislation;
- analyze the experience of the popular tribunals;
- conduct social studies;
- conduct comparative law studies;
- promote the civic education of the public;
- organize a center of documentation and judicial information;
- prepare and publish periodicals on legislation;
- publish specialized legal studies.

This department does not draft laws. It gives opinions and comments to the Technical Committee which prepares the draft laws.

The department has some 20 authorized positions, but at present it has only three people on its staff - one professional and two students. The formal head of the department is in London working on a Ph.D. The acting head of the department is the only professionally prepared person on the staff. Other professional researchers who had been supported with external donor funds are no longer connected with the work.

The production of the department has been disappointing. The professionally trained researchers who had external donor support did produce several articles on topics related to the experience of the community courts, and the acting head of the department prepared an unpublished study of several aspects of family law. However, none of these efforts has resulted in draft legislation. Indeed, the department does not have the expertise--either through its own staff or through arrangements with others such as the university--to provide the Technical Committee with useful advice and comments. Furthermore, the department

has not arranged for the publication of recently approved laws nor does it have plans for arranging for the collection and distribution of legal information or for supporting the publication of studies and legal commentary by others. Perhaps most serious of all, the department does not have an elaborated methodology for the analysis and consideration of the various aspects involved in drafting new or reformed legislation or for having such legislation considered and accepted by the segments of society to be most affected by it. Thus, while a lack of human and material resources is a very serious impediment to the work of the department, a lack of a concept of how to organize its work and a lack of priorities is equally troublesome.

3. INAJ

In 1975 the GRM abolished the private practice of law and created the National Service for Legal Consultation and Judicial Assistance which was placed under the Attorney General. With the resumption of the private practice of law, the government created the National Institute of Judicial Assistance (INAJ) in 1986 to organize, control and monitor the provision of legal services. While placed under the MOJ, INAJ was given legal personality and financial and administrative autonomy. Its responsibilities are to:

- grant persons the authorization to practice law;
- see that its members observe the rules and good conduct;
- exercise discipline over its members;
- defend the interests of its members;
- evaluate the technical capacity of its members;
- assist in the study and divulgation of legal information.

INAJ's structure consists of several entities. The General Assembly is composed of all members. It is to meet once a year to deliberate over pending statutes, plans and policies and to approve the yearly report of INAJ's operations. The General Assembly also chooses five members of the Council of Control and Inspection who serve for five year terms. The Minister of Justice also can appoint members to the Council and suspend its operations or overrule its decisions. The Council is to oversee the professional actions of the members; deal with complaints about them; and conduct disciplinary proceedings. The General Assembly also chooses five members for the Technical Council who serve for five years. Again, the Minister of Justice also can appoint members and suspend the operations or overrule the decisions of the Technical Council which is to give opinions on questions of law and on the authorization to practice law. The Director and the Deputy Director of INAJ are appointed by the Minister of Justice, and the staff of INAJ reports to them. INAJ's budget is part of the budget of the MOJ.

INAJ's membership consists of all the persons who are authorized to practice law in Mozambique. To be a member of INAJ one must meet the educational requirements and be in good political standing. There are three categories of membership. The highest is that of lawyers who have received the full university law degree (granted after five years of

study and the completion of a thesis) and who have completed their one year apprenticeship. They can perform any legal function. There are approximately 47 such members. The second category of membership is that of judicial technicians. They must have received the basic university law degree (usually granted after three years of study). They may act as lawyers in matters involving penalties of no more than 16 years' imprisonment or property disputes involving no more than the equivalent of \$44 or in any matter in a Province in which no lawyer is resident. There are approximately 40 such members. The third category of membership is that of judicial assistants. They have some judicial formation beyond their basic secondary schooling. In fact these judicial assistants usually work for public institutions such as INAJ, the court system and the Office of the Attorney General. In addition the MOJ can authorize foreign residents in Mozambique to give consultative assistance in legal matters. Persons who meet the above qualifications may still not be members of INAJ (and thus authorized to practice law privately) for two years after leaving certain positions in the public service such as members of the cabinet; directors of administrative, police or fiscal agencies; magistrates of the courts and the Public Ministry; functionaries of the courts; notaries or archivists of the Registries.

In theory, a person obtains legal services in Mozambique by going to INAJ for referral to a lawyer. Payment is made according to a fee schedule published jointly by the MOJ and Ministry of Finance. Payment is made to INAJ, which retains 20% for its costs and collects a tax of 30% on the remaining 80% before paying the lawyer. In fact, legal services usually are obtained pursuant to direct contacts between the lawyer and the client and are paid directly to the lawyer at a level negotiated between them--a level which usually is higher than the official schedule.

Although INAJ is supposed to conduct disciplinary proceedings there have been only four investigations of complaints against its members. All resulted in temporary suspensions from the practice of law. There were more accusations than investigations, since INAJ did not have the capacity to conduct more.

In addition to its responsibility for regulating the legal profession, INAJ is charged with providing defense counsel in criminal cases and with promoting civic education. The responsibility for providing defense counsel is met through the appointment of private lawyers (usually by the courts) who are then paid from INAJ's resources if the defendant presents the requisite certificate of need from the appropriate ministry. However, this system does not function well. Private lawyers are too busy to accept appointments as defense council, and the defendants do not know how to obtain the certificates of need. As a result it usually is the judicial assistants on INAJ's payroll who provide the defense, and that defense usually is a mere formality. (The training and civic education responsibilities are discussed in sub-part F below.)

To meet its responsibilities INAJ has a staff in its central office of two part-time lawyers, two full-time judicial assistants and seven administrative staff people. It also has several provincial offices which are staffed by some 30 judicial assistants. This level of

staffing is below what would be required to meet all the responsibilities assigned to INAJ, whose material resources are also inadequate. Furthermore, a discussion of what are appropriate responsibilities for INAJ to exercise is needed. INAJ is in the process of assisting in the creation of an independent Bar Association which would assume most of the responsibilities for the supervision and support of the private practice of law. (See sub-part E below.) If that effort is brought to successful fruition INAJ would be able to devote its attention to the creation of a useful system of publicly financed legal assistance to persons in need and to fostering civic education. Both of those efforts will require cooperative activities with the other organizations of the sector.

4. Registries and Notarial Services

The Portuguese legal system places importance on the registration of formal legal acts such as marriages and deaths, property and land transactions, creation of commercial and other organizations and wills and trusts. Registry of the act or the property provides strong proof of its correctness and of its ownership. Thus the Portuguese colonial legal system created a series of registry offices throughout the country. They provided the most common connection between the people and the formal legal system. That remains the case today.

A 1986 Diploma of the MOJ created the National Direction of Registries and Notary Offices to coordinate the work of the various existing registries. Pursuant to that Diploma the personnel of the registries were merged into one service. 1,596 positions were authorized of which approximately 929 have been filled. Of all those persons only three are official notaries. None are fully qualified lawyers although the Director currently is studying to obtain a full law degree. The budget for the registries consists of allocations from the MOJ and from the retention of 60% of the fees collected. All the work of the Registries is done manually. Computerization is not used.

The major problems in the operation of the system are the backlog in filing of documents, delays in locating documents that are requested (an average of eight days if the document is in the same Province in which the request is made, but three to six months if it is in a different Province) and the incorrect filling out of the forms. To meet these problems the management of the registry system is stressing the importance of providing training to its staff--including legal training--and in preparing an Organic Law for the service which will be the basis for its further rationalization. A draft of an Organic Law has been prepared. It would create a career service for the personnel working in the system. As part of the process of adopting and implementing an Organic Law, discussion would seem to be called for on the wisdom of devoting the very significant level of human and material resources which are being thought of as necessary to make the system perform better. The large majority of Mozambican persons connected to the legal system think that the registry system needs much better trained people and modernized facilities. However, a minority questions whether the function might better be treated as an administrative convenience calling for a more modest investment of resources.

5. Coordination and Support for the Sector

Despite the removal of the court system and the Office of the Attorney General from the MOJ, the Ministry is still considered to be the leader of the justice sector. It is responsible for organizing training for the sector's organizations, and for dealing with external donor agencies. It is working on these responsibilities. Its two other major tasks of sectoral coordination are those of fostering the availability of legal information and of fostering mutually supportive actions among the sector's organizations and with the rest of the government. The MOJ does not appear to have plans or concrete activities directed at either of those tasks. The World Bank and the Danish aid program are placing importance on the former task. Re the latter task, it can be argued that given the small number of trained lawyers operating in the country, their familiarity with each other, the tradition of MOJ leadership and the political uniformity of the current administration, informal coordination is still feasible. This is likely to change as multi-party administration may take place and as the number of lawyers with responsibility in the sector's organizations increases.

C. Structure and Operation of the Court System

1. Formal Judicial System

By 1978 the MOJ had organized the court system for the newly independent nation. In 1989 the Supreme Court and the court system operating under it were separated from the MOJ. The Constitution of 1990 formerly established the independence of the court system, and the Organic Law which came into effect this year and the 1991 law governing the judicial career provide the structure for that system.

The formal court system of Mozambique follows a traditionally hierarchial pattern. At the bottom are the 118 District Courts, which are trial courts of limited geographic jurisdiction for crimes whose punishment does not exceed eight years of prison, for family matters and for civil actions whose value does not exceed approximately \$650. At the next level are the eleven Provincial Courts with Province-wide jurisdiction for all criminal and civil actions not reserved to the Supreme Court or other special courts and for appeals from the District Courts within their respective Provinces. The highest level is the Supreme Court, which has nationwide jurisdiction. It is a trial court for criminal actions against high government and judicial officials and for actions for loss and damages against high judicial officials. However, its main responsibility is to be the final appeals court and to direct the judicial system by resolving conflicts among other courts and by adopting measures for good administration. The Supreme Court is assisted in its work by a Judicial Council and a Consultative Committee. The Constitution also calls for the establishment of: (i) a Constitutional Council to declare unconstitutional or illegal the legislative or statutory acts of state bodies and to settle conflicts among sovereign offices, and (ii) appellate courts intermediate between the Provincial Courts and the Supreme Court. However, neither of those institutions has yet been established.

The Organic Law of 1992 sets forth several basic principles of organization and operation including some which are not common in other civil law jurisdictions. Among these are the following:

- all hearings before a court are to be public unless there is a law or specific court decision providing otherwise;
- elected judges are to participate in findings of fact;
- facts found at the first instance level can be appealed only one time;
- the Office of the Attorney General to be represented on each court;
- higher level courts can issue directives to lower level courts on their operations (not just on questions of law);
- judges can be added temporarily to a court by the President of the Superior Council;
- cases may not be removed from a competent court except as expressly provided by law;
- the judicial division of the country will be the same as the administrative division whenever possible; and
- special jurisdiction courts can be created by law.

The Supreme Court: This court consists of seven professional judges appointed by the President of the country who serve until their retirement or removal for cause, 16 elected judges and eight supplementary judges. The President and Vice President are appointed to five year terms. Their appointment must be ratified by the Assembly. When it acts as an appeals court or as a general second instance court, the Supreme Court is constituted only by the professional judges. This instance has as its purpose:

- achieving uniformity in jurisprudence,
- resolving conflicts between courts and other governmental authorities,
- resolving conflicts of competing laws or decisions among judicial divisions, and
- providing a form for appeals from its own sections.

When the Supreme Court acts as a combined trial and appeals court the elected judges participate and a quorum of two thirds of the members is required. This instance is used in the case of trials for crimes of, or suits for damages against, high government officials and senior magistrates of the court system and the Office of the Attorney General.

The Supreme Court also operates in sections. The competency of each section is to be determined by internal regulations of the court. The President of the Supreme Court assigns judges to the various sections each of which is to be directed by its most senior professional judge. Each section will have at least two professional judges and, when a finding of facts is required, at least two elected judges. The appellate jurisdiction of the sections is used to:

- resolve conflicts of competency among the Provincial Courts and between them and the District Courts;
- review civil and penal sentences;
- suspend or annul sentences imposed by lower courts if so requested by the representative of the Attorney General;
- provide appellate review of both fact and law;
- propose measures to the full Supreme Court for achieving uniform jurisprudence and good administration.

The first instance jurisdiction of the sections is used for trials of crimes, or suits for damages against, members of Congress and high government officials and magistrates not falling under the jurisdiction of the full court.

The Provincial Courts: In addition to the basic jurisdiction over criminal and civil cases not assigned to other courts, the Provincial Courts hear criminal actions, and actions for loss and damages, against judges and magistrates of the Office of the Attorney General at the district level. As with the Supreme Court, the Provincial Courts can be divided into sections which will consist of both professional and elected judges. The President of the Provincial Court proposes transfers of District Court judges for the approval of the Supreme Court; distributes the elected judges among the sections; issues regulations for the operation of the District Courts; and disciplines their members.

District Courts: The District Courts also consist of professional and elected judges and may be divided into sections. These courts are to be divided into two classes depending on the scopes of their jurisdiction. Until the new system is fully operational all existing District Courts will be considered to be second class.

Corpus of Judges

Professional judges may not participate in politics or have other jobs except for research and teaching. They must live in the jurisdiction for which they are responsible unless an exception is granted by the Superior Council. In addition to their salaries, which are set according to established categories, judges are entitled to receive free medical assistance for themselves and their families, free furnished housing or a housing allowance, free use of public transportation in their jurisdictions and special protection for themselves and their close family members. Professional judges also are to be given certain privileges to facilitate their work and independence. Among them are: special identification documents, permission to use arms in self defense, free access to all controlled areas in their jurisdictions, freedom from preventive detention unless caught in the flagrant commission of a serious crime, freedom from the requirement to give official declarations without the previous approval of the Superior Council and special forms and processes in any criminal or civil actions brought in connection with the performance of their official duties.

There are to be five classes of professional judges. The highest class consists of the magistrates of the Supreme Court who are chosen from the judges of law, first class. Below the magistrates are judges of law, first class and second class and judges, first class and second class. Promotion within the classes of judges requires two years in office in the case of judges and three years, as well as performance classifications of at least the level of good, in the case of judges of law. In the case of promotion from the category of judge to that of judge of law there are to be specific subject matter tests as well. Promotions must be to particular vacancies and are to be the result of competition by documents submitted by the eligible judges.

In addition to serving on the courts the professional judges may be commissioned to serve as magistrates of the Office of the Attorney General, members of the judicial inspection service, teachers in the judicial training system, heads of administrative units in the court system, Secretary of the Superior Council or Secretary General of the Supreme Court.

In theory most courts have more than one professional judge and can divide some of their work into sections each with different judges. The sections can be specialized by topic (e.g. criminal matters) or be used just to split the case load. In practice, only the Supreme Court and the Provincial Court of the City of Maputo are organized into sections because there are not enough judges to staff them. Indeed, the shortage of professional judges is severe. The Supreme Court has seven professional members all of whom are fully qualified lawyers. However, of the 50 authorized professional judgeships in the Provincial Courts, only 17 currently are filled by fully qualified lawyers and 25 have no incumbents at all. Most of these professional judges were trained in Portugal. Of the 120 professional judgeships at the District Court level none are filled by fully qualified lawyers and most of the 100 judges in place have only a ninth grade formal education. To permit these courts to operate in sections would require another 100 judgeships. Partly because of this shortage

the pending case load of the court systems is growing, having moved from 595, 185 cases in January 1990 to 606, 783 cases in January 1991.

The shortage of judges is somewhat mitigated by several factors. First, the Office of the Attorney General is in charge of supervising the investigation and prosecution of crimes - a function which in many civil law jurisdictions is the responsibility of a trial judge. Second, the Constitution provides that all courts will have judges elected by the national, provincial and district legislatures who will participate and vote on questions of fact at the trial level. The enabling legislation for the elections and the terms of service and compensation for these judges has not yet been prepared, but in the meantime similar judges, previously elected by various organizations without regard to any formal preparation, continue to serve. However, since they currently serve without compensation it is becoming difficult to get them consistently to perform their duties. Third, there are some 880 Community Courts consisting of only elected judges. They deal with family matters, small civil conflicts and infractions not justifying fines greater than \$4-\$5 or more than 30 days of community service. These courts do not have compulsory jurisdiction and really resemble conciliation centers. One does not have to accept their decisions. However, observers think they are significant in holding down the workload of the formal court system as well as in providing information concerning the attitudes and experience of the common people.

Career System

In order to reinforce the professionalism and independence of the professional judges, the Constitution provides for, and a law was adopted in 1991 creating, the Superior Council of the Judiciary which is to implement standards and procedures for nominating, compensating, qualifying, promoting and disciplining the judges. The Superior Council is to consist of the President and Vice President of the Supreme Court, two representatives nominated by the executive branch, four elected by the National Assembly and seven judges elected by their peers. The Superior Council proposes two nominees to the President of the country for each vacancy on the Supreme Court and nominates the other professional judges and functionaries of the court system. It also investigates and decides charges against judges. Its decisions be appealed to the Supreme Court. It will meet as a body three times a year and otherwise act through a permanent committee of six.

The law calls for judges to be citizens with full civil rights and be more than 25 years old (35 years in case of the Supreme Court), to have a law degree and to meet other criteria to be set by law. However, it also provides for ignoring these standards as may be necessary in a transition period -- except for the requirement that judges of law have a law degree. The 1991 law also contains the standards and outlines the procedures to be used in implementing the career system. The rules for the retirement of judges are to be the same as for the general public service. Transfers and assignments are to be based on seniority within the category of service involved. Judges may not seek or be forced to accept a transfer within three years of their assignment except as a result of a promotion or a disciplinary action. Special inquiries may be made into a judge's actions and special reviews

made of his overall performance if there are reasons for doing so. Disciplinary standards and detailed procedures are also set forth in the law. The evaluation system is to be based on performance, technical preparation, intellectual capacity and civic appropriateness ("idoneidade"). Performance classifications are to be done at least every three years. They are to use: the results of judicial inspections, the results of any inquiries concerning performance, the results of any disciplinary processes, time in service and publications about legal subjects. There are five levels of quality of performance. A rating in the lowest level will trigger a suspension from service and an inquiry re fitness for the judicial career.

The system to be administered by the Superior Council began to operate only in early 1992. It has nine authorized positions of which five are filled. This staff will be headed by a Provincial Court judge to serve on a two year detail as Secretary General. The judges of the Supreme Court themselves have been performing much of the personnel work--for instance, they perform the evaluation of the other judges in the system and are handling the 15 pending disciplinary cases at the national level.

Administration and Support Services

To help the Supreme Court administer the court system, the Organic Law provides for a Judicial Council to analyze and decide basic questions of operations and for a Consultative Committee to give opinions on the annual programs of the administrative departments, on proposed directives to the inferior courts and on draft regulations. The Judicial Council consists of the members of the Supreme Court, the President of the Provincial Courts and the Secretary General of the Supreme Court. The Consultative Council does not include the judges from the Provincial Courts. The two Councils are headed by the President of the Supreme Court. Similar councils can be created at the provincial and district levels if approved by the President of the Supreme Court. None of these councils are yet operational.

The administration of the court system is the responsibility of the Secretary General who reports to the President of the Supreme Court. That position currently is vacant. The administration of the court system is being carried out by some 700 administrative personnel (about 1,000 such positions are authorized). The staff is highly decentralized with only 30 working in the central departments under the Supreme Court and with supervision being provided by the individual courts in which most of the personnel work. The standards for this work are given in a regulation issued by the Ministry of Justice in 1989 before the court system was separated from that Ministry. That regulation gives descriptions of standard positions and the typical staffing of each type of court.

The support services provided to the work of the court system are weak. No periodic information on operations is published. Some statistics on cases are collected, but they are not analyzed and there is no real case-tracking system at any level much-less for the system as a whole. Word processors and computers are used in a very limited way. Books and other materials concerning the law are not available apart from the library in the offices of

the Supreme Court and that library is limited and poorly indexed. There are no manuals to govern the operation of the system. The technical inspections of the operation of the courts which the Organic Law makes the responsibility of the Superior Council of the Judiciary are not yet being performed.

Budget

There is no unified budget for the court system. The Supreme Court and each of the Provincial Courts prepares its own budget for submission by the Ministry of Finance (MOF) -- the Supreme Court to central office of the MOF and the Provincial Courts (on behalf of themselves and their district courts) to the provincial offices of the MOF. The MOF decides what budget to present to the National Assembly and disburses the funds directly to the Supreme Court and the Provincial Courts. The Supreme Court is considering trying to create a unified budget for the system, but even then would not seek to have funds disbursed through its own channels. It would prefer to submit the system's budget directly to the National Assembly, but thinks that the MOF would oppose such a step.

In addition to the funds provided through the MOF the court system generates fees which it keeps for its own use. The fees are generated by each court, which is entitled to use up to an agreed amount with any excess being transferred to a central account. While introducing flexibility into the budget's implementation, the magnitude of these fees is small compared to the difference between the resources estimated to be necessary to run the system and those in fact provided.

Needs and Plans

The main priority of the court system is to improve the capacity of its personnel by providing training both to the current members of its professional and administrative staff and to those persons entering its service. (This topic is discussed further in sub-part F below.) In addition, the court system is anxious to obtain more and better organized legal materials, to achieve the timely publication of a periodical reporting its actions and to undertake the systemization of information concerning its operations.

Comments from private lawyers indicate that they think the court system should place priority on:

- overcoming the tradition of political interference with the courts--especially by the provincial governors;
- getting legal materials to the judges so that their opinions are better based;
- adding to the corpus of judges and cutting back on non-judicial activities of judges (and especially of the magistrates of the Supreme Court) so that cases can be handled more expeditiously;

- putting the career system for judges into full operation in order to make them more independent and accountable; and
- addressing impediments to the use of the formal court system which arise from the custom of the people of going to community courts and religious figures for dispute resolutions and from the widespread lack of Portuguese language among the population.

2. Administrative Court

In addition to the traditional court system and the Community Courts, there are several entities with court-type functions. The most important of these is the Administrative Court. It combines several functions. It is to review most major personnel actions taken throughout the government (some 23,000 per year) to assure their conformity with the laws and regulations. It provides accounting services and auditing for the whole government. It is the appellate court for decisions taken by the fiscal and customs courts which are located within the MOF and staffed by that Ministry ordinary employees. It has jurisdiction at both trial and appellate levels over disputes concerning government contracts and for actions against organs of government sovereignty and their leaders. To conduct its work the Administrative Court is organized into three specialized sections and sessions of the whole court. There is no appeal from the decision of its plenary sessions. It operates only in the capital.

A new organic law has been passed for the Administrative Court which calls for a court of 10 judges; gives those judges the salary and benefits of members of the Supreme Court; includes those judges in the career system of the regular judiciary; and expands its jurisdiction to cover the actions of all high government officials (including the military). The new organic law has not been published and is not in effect. Meanwhile, because of low salaries and other factors, the Administrative Court has only two judges and a support staff of 15. The result is that the Court has all but ceased to perform any of its responsibilities. Because the Administrative Court is modeled on a similar institution in Portugal, the expectation is that persons familiar with the operation of that institution will assist the Administrative Court to organize its work, and that training of the professional and other staff of the Administrative Court will be provided either in Portugal or by persons from Portugal.

3. Community Courts

Some 880 Community Courts have been functioning in the country. A basic law governing their operations was enacted in 1992. The system established in the new law incorporates the existing courts of localities and "barrios". Each Community Court is to have eight members--five basic members and three supplementary members. The members are to be elected by local representative bodies for three year terms. Any citizen 25 years or older with full civil rights may be elected. No educational or professional requirements

need be met. The provincial governors are to organize the elections, provide compensation to the judges and support the operation of the courts. To date elections have not been held and no compensation is being paid to the judges. The District Courts provide what support the community courts receive.

The procedures of the Community Courts are to be informal--lawyers are not necessary and local languages may be used in the proceedings. However, a written record in Portuguese is kept by an employee using a typewriter. The record consists of the allegations and the decisions and explanations given by the judges. These written records are available for inspection by the formal court system. Furthermore, the setting and procedures used in the Community Courts imitate those in a formal court with judges being given signs of respect (such as the witnesses standing to give their testimony) and the judges citing the provisions of law on which their judgments are based.

These courts arose from the experience of the FRELIMO party during the revolution leading to independence. To some extent the courts are in replacement of the judicial work of the traditional leaders such as chiefs. Thus, these courts may be the subject of contention between the current government and the armed opposition. These courts also are the subject of some concern by legal professionals because of their supposed lack of independence from external pressures and use of local rather than national standards. However, what limited analysis exists concerning their operation indicates that they are providing a useful service.

D. Structure and Operation of the Office of the Attorney General

The 1990 Constitution includes the Office of the Attorney General and places the function of the public prosecution in it. The office is to: represent the state in court, give advice to the Council of Ministers on legal interpretations (including the constitutionality of newly passed laws before they are published and implemented); initiate criminal prosecutions; enforce criminal sentences; control the legality and duration of penal sentences; ensure the legal defenses of minors and incapacitated persons; and control the legality of all government actions including those of the armed forces. The Attorney General is appointed and serves at the will of the President of the country but gives advice to the Council of the Ministers and the National Assembly as well.

The structure and responsibilities of the Office of the Attorney General currently are set forth in the Organic Law of 1989 which declares that the office is the governing organ of the Public Ministry and is autonomous with respect to all other government entities. The 1989 Organic Law is under review to determine what changes may be called for by reason of the 1990 Constitution and the evolution of the government's policy concerning legal reform and the administration of justice. The main changes are likely to be in providing a full career service and a more independent and elaborated support system.

The Office of the Attorney General is organized in a way which parallels that of the court system--with central, provincial and district levels. At the central level there are the Attorney General, (Procurador General), the Vice Attorney General (Vice Procurador General), Assistant Attorneys General (Procuradores Adjuntos) Superior and Technical Councils and the various supporting departments. The Attorney General attends sessions of the National Assembly and the Council of Ministers when legal matters are discussed; appoints and supervises the work of the procuradores except for the Vice Attorney General; overrules the decisions of the other procuradores if they are not in conformity to law; and represents the function of the office in plenary sessions of the Supreme Court. The Vice Attorney General supervises the work of the departments and promotes cooperation between the work of the office and the court system. The Assistant Attorneys General represent the office in the several sections of the Supreme Court and are in charge of the various departments. There are to be offices of the Attorney General at both the provincial and district levels. The procuradores in charge of them will represent the office at the corresponding levels of the court system. At the provincial level there are to be assistant procuradores as well.

The Superior Council consists of the Attorney General, the Vice Attorney General, the Assistant Attorneys General and the provincial level procuradores. It is to meet twice a year to analyze the proposed plan of operations and to approve the annual report, the plan for inspections and changes to the internal regulations of the Office. The Technical Council, which has the same membership except for the provincial level procuradores, is to provide the opinions prepared by the Office of the Attorney General. However, the Attorney General himself decides whether the opinions are to be considered "doctrine" which must be followed by all the procuradores. The Superior Council began to function in 1991. The Technical Council will begin to function after all the assistant Attorneys General have been appointed.

There are to be departments concerned with criminal matters, with matters of family, minors, and labor relations and with the control of legality. There is also to be a Secretary General and an inspection service. The latter is to evaluate the work of the procuradores and oversee the legality of the work of other government agencies. Diplomas are to be issued setting forth in detail the duties of the departments, the Secretary General and the inspection service. They have not yet been prepared.

Legal Staff

The Office of the Attorney General has not yet issued a list of its professional positions or a statement of their duties and qualifications. Currently it is working on a draft which also will be the basis of the creation of a formal career service for the organization. However, it is clear that the Office of the Attorney General is operating with a shortage of professional personnel. It currently has only 77 procuradores of whom only 15 hold the full legal degree with a roughly equal number having had some university training and the balance having only a grade school or some high school education. At the central level

there are six positions for procuradores. Only those of the Attorney General and Vice Attorney General are filled. The four positions for Assistant Attorneys General are occupied on an acting basis by provincial level procuradores. All hold legal degrees. At the provincial level there are 14 positions for procuradores but only 10 are filled, and of that 10 four are acting in positions at the central level as well. At the district level there are only 54 procuradores to serve some 120 district courts. Most of these people have only a grade school education (as is the case with most of the district level judges).

This shortage of professional staffing is particularly serious because under the law governing the criminal process the procuradores act as prosecutors and have some of the functions of an investigating judge in other civil law systems and because they must sign certain documents in each case coming before the courts to indicate their agreement that proper procedures have been followed. (It appears that the procuradores often do not attend the court hearings; and that in order to keep the process moving, this requirement is often simply ignored. Furthermore, when the procuradores do attend their role is usually perfunctory.) The shortage is also an important impediment to the office's being able to assign professional personnel to all the government agencies to assure their adherence to the law and official procedures (rather than just having a few persons on call to respond to particular complaints) and to review draft legislation--a responsibility it has not yet undertaken to meet. It also may be a factor in there having been only one instance to date in which the Attorney General has asserted before the Supreme Court that a government agency was not acting in conformity with the law. The shortage is given as the principal reason that the office continues to use the same personnel to be responsible for both the fiscalization of other government entities and the investigation and prosecution of crime.

Support Staff

A Despacho of 1991 lists the 2,268 positions which are authorized for the administrative support of the work of the Office of the Attorney General. The list calls for 68 positions at the central level, 177 at the provincial level and 2,023 at the district level. However, only 40 to 50 of these positions have been filled. The Office's budget has funds for the positions at the central level, but the funds for the positions at the provincial and district levels are to come from the budgets of the provincial governments which have yet to provide significant support for them. Thus the Office of the Attorney General continues to be largely dependent on the court system for its administration - often using the same administrative support staff as the judges and space in the court buildings at the provincial and district levels. Furthermore, the central office support functions are very thinly staffed. There are only three persons working on budgets, four on personnel matters and three in process control. The administrative office only handles promotions and disciplinary actions concerning the central staff while each provincial office handles those matters for the personnel in its province.

Approximately two years ago the Office of the Attorney General established a unit to keep track of its cases and the complaints which had been filed with it. However, the effort was abandoned because of lack of staff. Currently the only collection of information which is taking place is that of the monthly reports from the provincial level offices to the Vice Attorney General. These reports are the subject of questions and comments by the Vice Attorney General on occasions, but they do not amount to an information system or lead to analyses of operational problems or measures better to distribute or meet the work load.

Budget

As in the case of the court system, there is no unified budget for the Office of the Attorney General. The central level prepares its budget request, which is submitted to the MOF, which in turn makes the budget presentation to the National Assembly. Budget resources provided by the National Assembly are then disbursed through the Ministry of Finance. In contrast, the provincial and district levels of the Office of the Attorney General present their budget requests to the provincial governments which make the request to the MOF on their behalf and disburse funds that may be made available. Funds for the construction of facilities come from the budget of the Ministry of Planning. Thought has been given to creating a unified budget for the office, but it is assumed that the MOF would not be in favor.

Education and Training

Although the Office of the Attorney General thinks that the lack of adequately trained personnel is one of its major, perhaps its most serious, problems it has no training programs. It would like to sponsor attendance at the law school of some of its current personnel so that they can get their full degree and to send a few of its now qualified legal staff abroad for post-graduate training. It also would like to stress training for the district level legal staff through in-service training, but has lacked the budget resources to give to the MOJ to organize a training program for it. Eventually the office would like all the procuradores to have the full legal degree.

Plans and Requests

The Office of the Attorney General has not yet prepared a development plan or a refined statement of priorities. However, it has emphasized the need for additional staff, for the training for its personnel and for equipment and other support for the provincial and district offices which it would like to establish or strengthen. Because these problems loom so large, the office has not devoted much attention to the issues of organization, operational improvements and the need for a clarification of its responsibilities. However, it does seem to be open to learning from the experience of other countries. Among the topics which might be pursued are:

- techniques for guiding police investigation units;
- techniques for organizing an independent prosecutorial staff;
- case management and standards of review;
- standards and procedures for administering a career system.

E. The Legal Profession

1. Private Practice

When Mozambique obtained its independence from Portugal there were approximately 25 lawyers in the country. Then the government made the private practice of law illegal. As a result, most of the lawyers left. Those who remained went to work for the government or private organizations with external connections. Furthermore, the university law school which had been established in 1975 was closed in 1983 and did not reopen until 1987. In the interim Mozambicans received legal training from the socialist countries of Eastern Europe. While the ban on the private practice of law has not been formally removed, it is not enforced and the government's policy is now to accept, even to foster, the private practice of law.

The current list of legal professionals registered with INAJ indicates that there are 56 lawyers (all located in Maputo), 50 judicial technicians (most located in Maputo) and 32 judicial assistants (17 located in Maputo and 15 in the provinces). However, not all the lawyers registered with INAJ are in fact engaged in the full-time practice of the law. It is estimated that there may be as few as 13 doing so with the rest of the lawyers working for commercial organizations and providing legal services to others only on occasion. In addition to the lawyers registered with INAJ there are lawyers who are working for government agencies and in the courts and the Office of the Attorney General and thus not eligible to be registered. Adding these persons raises the number of trained lawyers to approximately 100. This compares with a recent estimate that there is a need for over 800 lawyers. (19 to teach in the law school, 111 for the Ministry of Justice, 120 for the court system, 140 for the Office of the Attorney General, 12 for the Administrative Court, 150 for private practice, 110 for the executive agencies of the state and 150 for the police and investigative bodies). While this estimated may be exaggerated, it is clear that there is a serious shortage.

The shortage of fully trained lawyers is somewhat alleviated by the use of judicial technicians and assistants, and the overwhelming concentration of trained legal persons in Maputo is somewhat mitigated by the fact that a lawyer can practice anywhere in the country. Still, given the current rate of graduation from the law school, the system is likely to get only about 40 new lawyers a year; and the demand for legal services is likely to grow more rapidly than that as improvements are made in the staffing of the legal sector's public institutions, as the private economy of Mozambique grows and as the peace process makes the provinces safer and more attractive for investment and commercial activity.

In addition to the shortage of trained professionals, there appear to be other important impediments to the effective practice of the law. Conversations with lawyers in Mozambique indicate that the more important ones are: (i) the lack of preparation of and support for, the persons exercising responsibility in the justice sector institutions (especially the courts and the Office of the Attorney General); (ii) the slow and inconsistent performance of the criminal justice system due to the complicated nature of the criminal process code, the defective work of the police and the attitude of judges who are not accustomed to dealing with active defense counsel; (iii) the slow performance of the complicated civil process code; (iv) the continuation of political interference in the work of the judicial branch especially at the provincial level; and (v) the existence of corruption especially in the administrative judicial units such as the customs courts and the fiscal tribunals. Some consider the lack of legal materials and information about the law to be a major impediment to the practice of law. However, others assert that this is not much of a problem for private lawyers because there are not many post-independence laws to keep track of and the decisions of the courts are not of such binding importance that the failure to publish them is crucial.

2. Bar Association

As part of its policy to strengthen the participation of the private sector in the economic and political life of the country the government is encouraging the creation of a Bar Association. In 1991 INAJ and some lawyers close to it prepared a draft statute creating a Bar Association. It is modeled closely on the one in Portugal. Membership in the Bar is to be required for the practice of law. Exceptions are made for lawyers who work for other organizations as employees and for members of the faculty of law who only give written opinions. Only lawyers (not judicial technicians or assistants) may be members. However, as a transitory measure judicial technicians and assistants can act in limited situations and as lawyers if no fully trained lawyers are available in the particular jurisdiction. Disciplinary powers over the conduct of lawyers will be held by the Bar Association. Lawyers will have to pay monthly quotas which are to be set by the Bar Association. However, fees to be paid to lawyers will continue to be set by the joint agreement of the MOJ and the MOF. In that regard it might be noted that the draft statute prohibits lawyers from using contingent fees and shared fees with lawyers not involved in the case, using publicity and refusing without good cause to accept an official assignment from a court.

The draft statute requires a year's apprenticeship beyond graduation from the university. (The apprenticeship is for five years in the case of graduates of a law school outside the country.) Time working as a magistrate for the courts or in the Public Ministry will count toward this apprenticeship. (Currently there is a requirement that all university graduates work for the government for a time equal to the time they were enrolled in the university. However, this requirement does not appear to be enforced and probably will be eliminated.) The apprenticeship requirement does not apply to lawyers who have been

registered with INAJ and who have practiced for five years or who are professors of the law school.

The draft statute also sets forth the structure of the Bar Association. There is to be a Congress which is elected by the General Assembly of all the members. The Assembly also chooses a Director for a five year term who heads the Assembly, the Congress and the Technical Council. He must have had 10 years' experience in the practice of law. The Assembly also elects eight members to a Superior Council and five members to Technical Council. These persons must have had eight years' experience in the practice of law. The Superior Council will concern itself with disciplinary proceedings, and the Technical Council will make recommendations re fees. In any province, city or district with at least 10 lawyers there is to be a local assembly and a four person council. Until elections for all these units are held the current organization of INAJ will govern. The President of the current Assembly will act as the Director; the Council of Control and Inspection will act as the Superior Council; and the Technical Council will perform its current responsibilities,

The draft statute contains considerable elaboration of the rights and privileges of lawyers, and it calls for the Bar Association to provide support and training for the profession. These provisions, and the concept that only fully trained lawyers should be members, are aimed at restoring the prestige of lawyers which was undermined by the actions of the government after independence. However, there is considerable skepticism in the private sector concerning the practicality of creating a full service Bar Association - including such steps as having its own legal information system - in a country with so few lawyers in private practice. Furthermore, the intent of the statute that the government will continue to set legal fees appears to reflect either a lack of realism, political posturing or a failure to appreciate the full implications of authorizing the private practice of law.

F. Education and Training Programs

1. The Law School

During the colonial period there was no law school in Mozambique. Persons wanting to obtain that degree went to a university in Portugal. With independence in 1975 a law school was established in the only university in the country. During 1975 to 1977 the law school offered a two year course of studies leading to the bachelor's degree. Between 1977 and 1983 the curriculum was expanded so that the course of studies to produce the full law degree lasted four years. However, in 1983 the government closed the law school on the grounds that it was not producing the type of lawyer needed by the revolutionary government and the socialist economy. The law school was reopened in 1987 with the intention of providing a five year course leading to the full law degree. However, no preparations were made beforehand to improve the curriculum or to prepares the requisite faculty members.

The law school has approximately 342 students of which approximately two thirds hold full time jobs as well. There are 97 students in the first year, 106 students in the second year, 88 students in the third year and 51 students in the fourth year. There are no students in the fifth year at present. All students in the same year take the same courses as a group. There are no electives. If one fails to pass one subject he must take that course by itself the next year. If he passes the course he continues with that class for the full course during the subsequent year. If he fails the course a second time he must leave the university for at least two years. Because of the high proportion of students who work and the strict rules regarding repeating courses, the drop-out rate for students has been high. It is expected that currently only 40 students will end up graduating from an entering class of approximately 100. Other criticisms of the organization of the law school are that it spends too much time on remedial work on secondary subjects such as Portuguese and English and that the class sizes are too large for effective learning. Some also assert that the curriculum should be more flexible with electives being permitted. Adjustments to the curriculum are being worked on at present, but the changes are not likely to be great or designed to bring about any fundamental changes.

The faculty of the law school at present consists of eight full-time and 31 part-time teachers. Of the full-time faculty members, three are expatriates and five are Mozambicans who received their law degrees in Portugal. Of the part-time faculty members, eight are from Portugal and the rest are Mozambicans. All have their law degrees. The standards and regulations applied to the faculty are those which are in use throughout the university. The salaries paid are equivalent to those of the government but without the social benefits. (For instance, full professors are paid at the level of "national directors".) The planned training of professors in Denmark (See part III C below) has not yet started because there is a shortage of capable persons who are interested in participating. Many have other jobs since they are only part-time faculty members and others have families which they cannot afford to take with them and do not want to leave behind.

The library of the law school has only some 8,500 books, and most of them are very old and available only on a closed stack basis. Currently the law school shares space with the Center for African Studies on the university campus in the outskirts of Maputo. Current plans are to have the law school get more generous space in the buildings on that campus now being used by the Workers' Faculty which is being phased out.

Needs and Plans

In its presentation to the Working Group planning for the World Bank project, the law school stated that it proposed to:

- stabilize and improve the faculty;
- reinforce the current faculty with foreign, cooperating law teachers who will both teach and give on-the-job training to the current faculty members;
- improve the pass rate of the students;

- increase the number of books and other resources for the library; and
- improve the physical facilities of the school.

In the short run the law school proposes to:

- develop the knowledge of its faculty through post-graduate training;
- contract six supplemental teachers (three Mozambicans and three expatriates);
- carry out training for technical-administrative personnel;
- establish studies of education programs "at a distance";
- establish a center for research;
- restructure the current curriculum;
- continue education in materials important to the economic transformation of the country,
- prepare a manual for guiding the work of the professors;
- establish a fund to support having superior students teach at the law school;
- computerize administrative tasks in the law school; and
- create a periodical for the law school.

In the medium term the law school proposes to:

- contract an additional five permanent professors (to reach a level of 13 compared to the goal of 19);
- increase the number and quality of the entering students;
- implement a program of instruction at a distance; and
- implement a center of research.

Conversations with the Vice Dean of the law school indicate that, as a practical matter, the law school intends to focus its efforts on conducting the current five year course to prepare lawyers. It does not plan to offer the bachelor degree as it did before it was closed since it thinks resuming that degree program would be a complicating factor in its curriculum planning. It does not intend to offer any program aimed at the post graduate apprenticeship requirement. It does not plan to provide training in legal drafting; and for the foreseeable future it will provide refresher courses for graduate lawyers only through lectures by visiting professors from Portugal. The law school does not see the possibility of increasing significantly the number of persons graduating. However, it will consider the possibility of introducing education at a distance. It does not favor the creation of other (probably private) law schools in order to increase the number of lawyers being produced.

The law school is considering the request to reserve 20 places in the law school for magistrates of the court system and the Office of the Attorney General who wish to get their law degree, but the discussions of what standards to apply to these applicants were not concluded before the exams had to be given for the current entering class. The discussions will be resumed.

2. In-Service Training for Public Sector Officials

The MOJ has been implementing a program of training for judges. Currently some 25 judges are participating in the five month course. The focus is on the judges of the District Courts. The content of the course responds to the recommendations of the Supreme Court. It is centered on secondary school subjects and on learning the texts of the existing legal codes. The instructors for the latter topic are higher level judges and other persons holding the full law degree. The US Embassy has given a grant to assist in the financing of this training. This is the second such course that has been given--the first having taken place in 1988. The Supreme Court and the MOJ would like to make the taking of similar courses compulsory for all judges. However, there has been no evaluation of the program's effectiveness and impact or of the reasonableness of its costs. (For further discussion of these courses see the companion report on training.)

The MOJ intends to offer a training program for court clerks and other administrative personnel of the court system. The course will be six months for new employees and three months for persons already employed. The MOJ has not developed in-service training for the other public sector organizations in the legal sector in part because of lack of funding. It would like to do so as well as to continue the training begun with the court system. However, its own structure for providing the training remains weak. For instance, no person has been placed in charge of the effort.

Center for Judicial Studies

In its presentation to the Working Group for the World Bank project the MOJ advocated the creation of a Center for Judicial Studies to provide short-term technical and professional courses of one to two years and specialized courses of three to five months. The Center would start as a technical-professional institution and become an institution with the capability to give superior professional and special instruction. In the short term the MOJ would:

- **implement one year formation courses and six month capacitation courses for judges and for magistrates of the Office of the Attorney General;**
- **implement three to five month courses for the formation and capacitation of the professional and support personnel for the justice sector's organizations;**
- **conduct analyses in order to define plans for the Center concerning:**
 - **the nature of the middle level courses to be given,**
 - **the requirements for entrance into the courses,**
 - **the overall curricula,**
 - **the teaching materials to be used, and**
 - **the type of physical facility needed.**

In the medium term the MOJ would implement the creation of the Center, begin to implement post-graduate courses and carry out training related to international financial contracts and other specialized areas.

To start the process the MOJ would like to bring short-term advisors from the training office of the State of California and from the judicial school in Portugal to help in giving more concrete content to the outline for the Center and its preparation. Discussions would include the degree to which all training for the legal sector's organizations should be centralized in one system or institution, the relative emphasis to be placed on the training of persons proposing to enter the sector's organizations and those already operating within it and the use of the methodology of education at a distance. Another topic to be explored is what relation there should be between the proposed Center and the proposed school for police agents and inspectors.

3. Continuing Education of Private Sector Lawyers

At present there is no program of continuing education for private lawyers. The university law school is considering the idea of organizing such a program using expatriate teachers. The provision of such training is the current responsibilities of INAJ and one of the theoretical purposes of the creation of a Bar Association, but no concrete plans or even proposals exist for carrying forward those ideas.

4. Civic Education

At present INAJ is conducting some public education concerning the law. It asserts that its radio programs have had an impact on the public's perceptions and it plans to prepare pamphlets using the approach and texts which have been part of that radio program. It has been receiving assistance from USIS and from Danish aid program in this effort. (The Danish support will continue.) The nature and potential of this program are discussed in the companion report on a training action plan.

III. CURRENT PROGRAMS AND PLANS

A. Government of Mozambique's Priorities and Plans

The GRM has expressed its intention to strengthen the operation of the legal sector and its institutions as one of the important steps in the transition to multi-party democracy and the rule of law. It has recognized the importance of the independence of the judicial branch and of the role of trained lawyers, both within the various departments of the government and operating independently of it. It has also stressed the need for preparing and enacting legislation to carry out the provisions of the 1990 Constitution and to modernize the legal support for a market economy. Indeed, the importance the GRM appears to give to providing training to legal professionals and to the preparation of reformed legislation is so great that it may obscure the need for other reforms in the sector.

However, the GRM does not have a formal plan or statement of priorities for work in the legal sector. The closest approximation to that is the paper setting forth the conclusion of the February 1992 workshop organized by the World Bank. The paper is based largely on statements by each of the major sector entities of what are its needs and proposals for action. The discussions under Part II above have included the main points of those statements. Since those statements have not been integrated into a program nor choices made regarding the focus or timing of an overall plan, the World Bank will support the preparation of a sector strategy and action plans as part of its project to be implemented beginning in 1993. That strategy should identify the major policy and institutional reforms which are to be taken by the GRM.

B. USG Supported Activities

1. A.I.D.

A.I.D.'s first support to the justice sector was the inclusion of \$500,000 in the Democratic Institutions Project to support analyses and activities of a priority nature for the strengthening of the sector. The first use of funds under that project was for the three consultancies which produced this report and the two companion reports re a training action plan and a legal reform action plan. The recommendations in these reports may be used as a basis for additional activities to be funded under the current project or for the preparation of longer term project which would receive its own, separate funding.

2. USIS

USIS has arranged three observation trips to the United States by representatives of the legal sector of Mozambique. The first was a month's visit in the fall of 1989 by two members of the Supreme Court and a provincial level judge from Maputo. The second and third were visits of a month in the spring of 1991 for two judges from the Supreme Court,

two judges from Provincial Courts, two prosecutors from the provincial level and the chief of the legal division of the Vice Presidency. The focus of these trips was judicial independence. In addition, USIS sponsored the attendance of three U.S. professors and one U.S. judge at an August 1991 seminar of the Center for the Study of Human Rights of Colombia University which was held in Uganda and attended by representatives from that country, Zambia, Zimbabwe and Mozambique. In the future USIS would like to bring U.S. professors to Mozambique to work on legal training for judges.

3. U.S. Embassy's Political Section

The Political Section of the U.S. Embassy provided a grant of \$70,000 to the MOJ for support of the training of 25 District Court judges in Maputo. (See sub-part II F 2 above.)

C. Other Donor Institutions

To date Denmark has been the donor most active in the justice sector in Mozambique, but the implementation of its program is but a year old. In the future the predominant donor to the legal sector is likely to be the World Bank, both because of the size of the project it is planning and because of the probable role it will assume in coordinating the activities of the other donors.

1. World Bank

As part of its preparation for a large, multi-sector, five-year Capacity Building Project the World Bank has been studying the needs of Mozambique's legal sector and preparing a program to respond to those needs. In these preparations it has been cooperating with the Swedish aid program, and the legal consultant to the World Bank has worked closely with the Dean of the university law school. In February 1992 a seminar was organized in Mozambique, with the help of a Portuguese law professor working at the law school, to discuss papers presented by the several sector institutions and to arrive at conclusions concerning the needs to be addressed. The MOJ formed a Working Group with representatives of the law school, the court system, INAJ, the Office of the Attorney General and the Administrative Court. The Working Group is to prepare the final project proposal to the World Bank and to oversee the implementation of the project. The focus of the project is to be on strengthening the law school, computerizing legal information and providing training to the personnel of the legal sector's institutions. The World Bank has emphasized the need for the preparation, discussion and approval of a long-term strategy to strengthen legal capacities and for special efforts to coordinate the activities of all the sectoral institutions and the various donor organizations. To assist the latter, the Bank staff has organized meetings in Mozambique of the representatives of the major bilateral donors to explain its project process and to encourage the donors to coordinate their programs with the proposed project.

The component of the World Bank project directed at strengthening legal institutions and training is planned for a base cost of \$7.0 million. The components would consist of "activities in the areas of:

- (a) Design and implementation of a long-term strategy and an action plan to strengthen the legal profession and the judiciary in Mozambique (U.S. \$800,000);
- (b) Improvement of the quality and efficiency of legal services, as well as training for the judiciary (U.S. \$3.4 million);
- (c) Facilitating the dissemination of the law and the administration of justice through the installation of modern automated legal information systems; upgrading resources and operations of law libraries; assisting the legal reform process through providing consulting services, conducting seminars, and preparing legal materials (U.S. \$932,000);
- (d) Assisting in the development of key legal institutions, such as the Administrative Tribunal, the Center for Judicial Studies, the Bar Association, and MULEIDE (U.S. \$610,000); and
- (e) Strengthening the institutions responsible for project implementation (U.S. \$1.3 million)."

This program is both large and comprehensive. However, the World Bank is not likely to be able to provide all the external resources that it estimates are needed and is seeking financing supplementary to these amounts. The supplemental funds would be for the local training of judges, judicial technicians, archivists and notaries; for the short-term training abroad of the administrative personnel of the sector's institutions; and for long-term juridical training abroad (most likely in Portugal). Furthermore, the staff of the World Bank is of the opinion that the program will not cover the full needs of the sector, and has requested that other donors consider adding their resources to do so.

In particular, the World Bank has suggested that AID consider supporting the following activities in the near term:

- short-term consultants' services from the U.S. and Portugal in assessing the institutional, financial, and technical viability of the establishment of the Center for Judicial Studies (cost estimated at \$50,000);
- short-term consultants' services to analyze and make recommendations on the appropriate systems for computerization for various sector institutions (cost estimated at \$20,000);

- study tour of AID judicial reform programs in Colombia, Venezuela, or Guatemala (cost estimated at \$40,000);
- travel costs of two staff members of the Attorney General's Office who have received scholarships to attend practical training in the office of the Procurador General in Portugal (cost estimated at \$4,500);
- exploration of possible twinning arrangements between the law school and leading U.S. law schools (cost estimated at \$20,000);
- study of the needs for revision of the commercial law (cost estimated at \$12,000).

For the longer term, the World Bank staff has suggested that AID consider supporting the following activities:

- creation of the proposed private Bar Association,
- strengthening the Community Courts,
- designing forms of assistance to INAJ to improve the delivery of legal services to the poor,
- exploring alternative methods of dispute resolution,
- preparing a code of environmental law,
- revising the family law, and
- refining the law of criminal procedures,

Clearly, the size and nature of the planned project will place it at the center of all discussion of future work in the legal sector in Mozambique. Policies or activities which are not consistent with its approach are not likely to prosper. However, there are certain aspects of the project that may prove to be weak or troublesome and that deserve further consideration. AID should be an active partner with the World Bank and other interested donors in such efforts. The most likely topics for such further consideration are:

- the absorptive capacity of the legal sector's institutions and the relationship between the strengthening of that capacity and the scheduling of the project's activities;

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- the need for focus and more concrete targeting of the activities;
- the need to identify policy and institutional reforms to be supported;
- the need consciously to incorporate the experience of modern legal systems apart from that of Portugal;
- the acceptability of the costs of several training programs being proposed; and
- the need to include evaluations and reforms of the methodology in the training activities to be supported.

2. Brazil

Brazil does not provide financial assistance to Mozambique in the legal sector. However, the Brazilian Embassy does make arrangements for the interchange of persons if others have the funds to finance them. For instance, the Brazilian Embassy recently arranged for a week's visit to Mozambique by two Brazilian professors to give lectures on the organization of the Brazilian judicial branch under the constitution of 1988 and on Brazilian civil procedures, and it is arranging for the visit to Brazil of four jurists and professors from Mozambique who wish to observe how the Brazilian court system supervises elections. In addition, there may be Brazilian professionals in Mozambique whose work was arranged apart from the Embassy. There are no current plans to modify this situation.

3. Denmark

As a result of discussions during 1989 and 1990 and of an appraisal mission late in the latter year, the Department of International Development Cooperation of Denmark (DANIDA) prepared a program of assistance for the legal sector to be implemented over three years beginning in May 1991. The estimated level of financial support is \$2.5 million. The purposes of the program are to: increase the quality of university legal education; strengthen the performance of the Supreme Court and of INAJ; improve the understanding of the citizens of democratic procedures and civil and human rights; and establish collaboration between Mozambican and Danish academic institutions. The main Danish institutions to be involved are: the Faculty of Economics and Business Administration and the Faculty of Modern Languages of the Copenhagen Business School, the University of Copenhagen (especially its law courses in English under the Erasmus exchange program), and the Roskild University Center's social sciences Ph.D. program. The main benefiting institutions in Mozambique are the university law school, INAJ and the Supreme Court.

The activities with the university's law school include the following:

- a pilot effort during the first year that will consist of: (i) seven fifth year law students studying English in Zimbabwe and then taking a semester's training at the law school in Denmark and returning to teach in the law school, (ii) three fifth year law students studying in Portugal for one year and returning to teach at the law school, (iii) senior faculty members of the law school attending seminars of two to three weeks in Denmark, (iv) Danish law school teachers conducting three-week seminars in Mozambique, and (v) Portuguese law professors teaching at the law school;
- attendance of Mozambican law teachers at regional seminars in Africa;
- Ph.D. programs abroad for two law teachers;
- provision of books, journals, equipment and furniture to the law school library, as well as the services of an expatriate librarian for two years who will train three Mozambican assistants;
- donation of law books for students;
- construction of a social center for students;
- renovation of facilities, including furniture and equipment;
- provision of vehicles for the transportation of faculty and for administrative support.

Consideration will be given to providing salary supplements for the law faculty - but only within an overall, coordinated government salary policy - and to providing support for research after an assessment has been made of the capacity of the law school to conduct such an effort.

The activities with INAJ will include the following:

- provision of furniture, books, equipment, and consumables to the central office and to the branch offices in six provinces;
- assistance from the Danish librarian mentioned above;
- support for training for judicial assistants from the provincial offices through three-week seminars in Maputo each year;

- support for civic education through: (i) financing radio broadcasts, (ii) financing the publication of a bulletin with a circulation of 5,000, and (iii) providing the services of a media consultant for two periods for three months each.

The activities with the Supreme Court will include the following:

- the provision of law books and journals for the library (including continued subscriptions to Portuguese materials);
- financial support for the publishing of a periodic bulletin;
- provision of computer hardware and software for administrative tasks (to be identified by a short term consultant);
- support for the creation of a computerized classification of legal information of the library;
- a visit of members of the Supreme Court to Denmark to observe its procedures for supervising elections.

To date, some \$50,000 in office equipment and consumables have been provided. Three law teachers from Portugal have been teaching at the law school; the Mozambican media consultant for the INAJ radio program has been identified; and the Danish librarian has been identified and arrangements made for her arrival in August 1992.

4. Norway

The Norwegian aid program has supported several research efforts in the legal sector. One was conducted by the law school with the purpose of incorporating family customary law into the penal code. Another was conducted by the Department of Investigations and Legislation of the MOJ to produce articles and books. The first effort was not completed. The second produced several articles, but the persons involved left the country and the work came to a halt. In addition, a Norwegian lawyer associated with the Norwegian aid program in Mozambique and a person from the Center for African Studies reviewed the experience of women in Community Courts in Maputo. At the moment, no additional aid activities are planned in the legal sector. However, the Norwegian lawyer will continue to be associated with the aid program and probably will focus her attention in the future on a continuation of the analysis of the work of the Community Courts and work with women's groups.

5. Portugal

Aid from Portugal to the Mozambican legal sector is provided through two channels: one is an agreement between the University of Coimbra in Portugal and the law school and the other is a protocol between the Ministries of Justice of Portugal and Mozambique. The two agreements originally covered the years 1991 and 1992, but they have been extended because of their slow implementation.

Under the agreement between the universities, three Portuguese law professors have been teaching at the law school. The protocol between the Ministries of Justice calls for activities to be conducted in the following areas:

- Six Mozambican judges per year are to be sent for training at the Judicial Training Center of Portugal.
- Short-term training of judges is to be conducted in Mozambique beginning in 1993.
- Magistrates of the Office of the Attorney General are to be trained.
- Technical assistance is to be provided in reformulating the judicial system (especially concerning the penal process and the work of the Registries).
- Technical assistance is to be provided to the computerization of the operations of the Ministry of Justice.
- Eight persons from the prison service are to receive training in Portugal.
- Magistrates and support personnel of the Administrative Court are to receive three months' training in Portugal beginning in 1993.
- Technical assistance is to be provided in preparing an organic law for the Administrative Court.
- Training is to be provided to the support staff of the court system by having two people per year go to Portugal for two months and having Portuguese trainers go to Mozambique for three months to work with provincial and district staffs.
- Books and periodicals are to be provided to the library of the Ministry of Justice.

- Training is to be provided to the personnel of the Registries and Notarial Offices through six to eight months of on-the-job training in Portugal and attendance at a six-month post-graduate course in the University of Coimbra.
- Training is to be provided in Portugal for six investigative police agents for six months and for 45 agents in Mozambique.
- Technical assistance is to be provided to police units in analysis, planning, and implementation.

Of all the above, only the long-term training in Portugal of judges and the post-graduate training of a lawyer from the Registry has begun. Undertaking the other activities is awaiting the preparation of concrete proposals by Mozambique and the availability of funds.

6. Sweden

The Swedish aid program would like to become active in supporting the democratization process in Mozambique including strengthening the rule of law. It is using the services of a Swedish professor of the sociology of law to assist it in analyzing the Mozambican situation. His report is due during the summer of 1992.

IV. MAJOR CONCLUSIONS AND ISSUES

A. Major Strengths and Advantages

Despite the economic and social problems facing Mozambique and the very serious deficiencies of its justice sector, there are several factors which are supportive of an effort to reform that sector in order to strengthen the rule of law and the role of a market oriented economy. The following are the positive factors which seem most important.

"Tabula Rasa" Situation. The organization of the justice sector's institutions is still in a fairly incipient stage. There are few lawyers and no bar association. The implementation of the organic law of the court system and the institutionalization of a judicial career have just begun. Progress has been made in this area since, as the MOJ points out, judges are no longer subject to summary dismissal or transfer to other regions as disciplinary measures. The Office of Attorney General is even less advanced in organizing itself and assuming its responsibilities, although these issues are being studied. The MOJ is still sorting out its relative priorities and how it should relate to the needs of the sector. Training programs and efforts to prepare reformed legislation are still largely in the conceptualization stage. This situation presents serious problems in meeting the needs of the country. However, it also presents the opportunity to introduce reforms and new approaches before organizations and methods of dealing with problems have become so entrenched as to make change more difficult.

Desire to Strengthen the Private Sector. Although the current GRM is the heir of the FRELIMO revolution and the socialist approach taken by the administration installed by that revolution, it has now adopted the purpose of encouraging a multi-party democracy and an expanded role for the private sector in the economic and social life of the country. That policy includes the operation of the justice sector. Laws are to be reformed to encourage private investment and commercial activity. The private practice of law has been reinstated as a practical matter and the government is phasing out the public organization of legal services in favor of the formation of a private bar association. While there undoubtedly will be a continued presence of some socialist habits and points of view, the intention to foster the role of the private sector appears to be genuine. Furthermore, there appears to be an openness to external experience which should facilitate the utilization of that experience if it is made available in a timely way.

Acceptance of Key Principles. The 1990 Constitution and the basic legislation introduced so far to implement its provisions in the justice sector accept the basic principles which appear necessary for the rule of law. The essential need for an independent judiciary is accepted and the importance of establishing a judicial career and well financed court system is recognized. The principle protections for the observance of human rights and fair and open procedures are included in the Constitution, and the need for more and better prepared lawyers to implement those protections and procedures, as well as to staff the

justice sector's institutions, is recognized. The role of the public prosecutorial staff as an independent force for supporting legality is accepted although the practical nature of that role and how it will be implemented is still under discussion. In large the foundation of principle is in place. The task is one of building the appropriate organizations and procedures on that foundation.

Willingness to Use Sector-Wide Approaches. In most countries it has been very difficult (and usually not possible) to get all the organizations of the justice sector to work synergistically. The sectoral organizations are in both the usually separate judicial and executive branches and include private sector groups and autonomous educational institutions. The civil law approach to staffing the courts with career professional employees rather than experienced members of the private bar tends to reinforce the separateness of their points of view. In Mozambique this appears to be somewhat less the case. The court system and the Office of the Attorney General have emerged from the MOJ within the last five years, and the MOJ still is seen as being the leader of the sector. Career systems are not strongly established in any of the sector's institutions; and thus the role of outsiders is both necessary and more acceptable. The small number of qualified lawyers in the country means that most know each other personally. All these conditions are likely to change over time in Mozambique, but there still would seem to be time to build into the sector's operations a stronger sense of coordination than is the case in most countries.

Some Experience with Oral Procedures. Although the legal system of Mozambique is basically that of a civil law jurisdiction and uses written procedures for taking testimony, it does have the tradition of holding open hearings at the trial level at which both parties and their legal representatives are present. These hearings are not as elaborate as are trials in the common law jurisdictions nor do they have the same degree of adversarial questioning and argument, but they do offer a base on which the advantages of oral and adversarial proceedings may be built.

Experience with Innovative Institutions. The use of elected judges and of Community Courts has been described above. These two aspects of the Mozambican justice system have been the subject of criticism. Some assert that elected judges will not have the independence of career, professional judges and that it will be difficult to limit their actions to that of finding facts. Thus the objectivity and judicial correctness of the results may be compromised. The same criticisms are made of the Community Courts (whose judges are all elected and need not have any legal training) as well as of their lack of formal procedures and reliance on local customs and traditions, which may cause a fragmentation of justice and thereby hinder the nation-building purposes of the government. However, these two approaches to administering justice have several advantages. They supplement the legal professionals who are in short supply. They incorporate community feelings and judgment somewhat as does a jury in common law countries and they offer a way for the system to accept regional differences. They also provide a way in which the mass of the people can be participants in, rather than just recipients of, the justice system. It is too early to come to a conclusion as to the long term effect which these two aspects of the justice

system will have. However, if properly documented and analyzed, the experience produced by them should be of considerable value in the on-going construction of the justice sector's institutions and legal structure.

B. Major Problems and Needs

The description of the operation of the justice sector in part II above includes references to many problems facing its several institutions. The following discussion highlights those problems which seem to be the most consequential.

1. Lack of Trained Personnel

All observers agree that the lack of trained lawyers is a very serious problem. There are only about 100 persons with full law degrees in the country and many of them either are holding executive rather than legal positions or have been trained in socialist law and legal procedures which are not very useful for current purposes. The Working Group for the World Bank project estimated that some 800 lawyers are needed. The university law school is producing only some 40 lawyers a year. As a result of this shortage of lawyers most of the judges and magistrates of the Office of the Attorney General are persons without full legal training; it is rare to have a lawyer working in private practice or public legal institutions outside the capital city; and it is difficult to organize the activities (such as analyzing and drafting legislation) needed for strengthening the justice sector and the overall legal life of the country.

This absolute shortage of lawyers is aggravated by several aspects of the Mozambican justice system. One is the complicated, formalistic nature of the legal system inherited from Portugal. In Portugal itself reforms in the system have been introduced and continue to be introduced as Portugal's participation grows in the life of the European Common Market. However, such reforms have yet to be introduced in Mozambique. Thus one still must deal with a substantive and procedural system which is slow and very wasteful of lawyers' time. A second aspect is the deficiencies in the educational system for lawyers. The weak preparation of high school graduates requires spending precious university time on remedial course work. There is only one law school with one campus and there appears to be little interest in creating additional or private law schools. The inflexible nature of the curriculum together with the approach to students who fail even one course contribute to a high drop rate at the university level.

A third aspect is that all the sector institutions appear to want lawyers for their staffing when lesser trained professionals might be used. Thus the Administrative Court and the Registries system seek to increase the number of lawyers on their staffs substantially although much of their work would seem to be of an administrative nature for which persons with public administration degrees, or even just practical experience, could well be used. Certainly the Administrative Court, which is equal in status to the Supreme Court, should have fully trained lawyers on its staff and some law graduates may be needed in the

Registries, especially given the complexities of the current system. Nevertheless, in view of the limitations on the legal education system's capacity and the mixed nature of the work of the Administrative Court and the Registries, careful consideration should be given of the potential uses of public administration graduates and other non-lawyers. Furthermore, the estimates of need prepared by the Working Group include levels of staffing by lawyers for the Office of the Attorney General, the MOJ and the investigative police which are equal to or higher than that for the court system itself.

In connection with the last aggravating aspect it should be noted that in addition to the fully trained lawyers, there are some 50 judicial technicians who have had three years of university training and some 32 judicial assistants who have had at least some secondary school education and several months of practical training provided by INAJ. The former are permitted to perform limited legal functions (including acting as District Judges) while the latter have been used by INAJ to provide legal assistance under its programs. However, the use of these two categories of professional legal personnel is considered to be only a transitory measure until enough lawyers are available to fill the responsibilities. The university law school no longer will accept persons who do not intend to take the full five-year program nor will it give the bachelors degree which evidenced the status of judicial technician. Then too, plans for the private Bar Association do not permit these categories of persons to belong to it.

2. Weak Utilization of the Formal Justice System

The formal justice system is not extensively used by the general population. There appear to be many reasons for this. The formal justice system was associated with the Portuguese administration and was considered to be an impediment to the socialist revolution of the independence movement. The poor means of communication within the country make difficult and costly access to the sites of the formal justice system--principally the national and provincial capitals. The exclusive use of the Portuguese language in the formal system intimidates the people since most of them are not comfortable in using that language if they know it at all. The variety of local customs means that the formal system often appears to be incomprehensible or unfair to people whose traditions and sense of fairness are not recognized. There is a strong custom of taking most disputes to traditional leaders and religious figures. The education of the people concerning the courts and how they might be used is all but non-existent. (This reflects the weakness of the overall education system of the country as well as the absence of a civic education program.) The active opposition of the armed insurgents to the system as an extension of the current government is an aggravating factor.

The result of all these factors has been that there is not a strong tradition of using the formal justice system. Given the fact that the system is so weak and understaffed, it is unlikely that it could respond to any greater demand for its services in the near term. However, as peace returns to the country the potential for using the formal system for those purposes will increase substantially. Some members of the legal community think that for

practical purposes the formal system should be considered of utility only for commercial matters and to serve the small, urban oriented population of the country. They would not seek actively to promote the use of the formal justice system for other purposes and by other population groups. This will be one of the major strategic choices for any program to strengthen the justice sector.

3. Weaknesses in the Autonomy of the Court System and the Office of the Attorney General

There are several conditions which are important impediments to achieving full and practical autonomy of the court system and the Office of the Attorney General. Some of the conditions are the result of the current situation facing the country, are recognized and are being addressed. Others reflect approaches and choices which deserve further consideration.

Tradition of Executive Branch Dominance. Mozambique has a strong tradition of executive branch domination of the public sector. It is still in the transition from a one-party to a multi-party democracy. Only in the last few years have the court system and the Office of the Attorney General been separated from the Ministry of Justice, and it still appears to be common for the national and provincial level executive authorities to seek to influence the work of these two systems. Furthermore, the MOJ continues to be responsible for functions key to the operation of the courts and the Attorney General. These include the provision of legal information under the guidance of the Supreme Court, and the planning and administration of legal training requested by legal sector institutions. The MOJ is also the focal point for the preparation of legislative reforms and of laws and other public measures needed to carry out the provisions of the 1990 Constitution. Thus there is still a habit of mind to look to the executive branch for guidance and decisions for the justice sector. This habit tends to limit the vision of what is called for to make the court system and the Office of the Attorney General truly autonomous.

Unfilled Positions. Both organizations have a large number of unfilled positions which impede their ability to meet their responsibilities. The estimate provided to the Working Group is that the court system needs 120 lawyers and the Attorney General 140 lawyers. Presently the two organizations have approximately 24 and 15. There are also a large number of vacancies in the authorized totals for their administrative and support staffs. There are several reasons for this situation. The shortage of trained lawyers (and other professionals) has been mentioned previously. The level of salaries is considered to be low for positions below the top, political ones. The mechanisms for conducting a career service are not yet in place. The offices for identifying and administering personnel themselves are not properly staffed. Without fuller and better staffing these organizations are not likely to be able to perform in a manner which will gain the confidence of the public and thereby provide them with support for their autonomy.

Career Systems Not in Operation. Neither organization has a fully functioning career system. Although judges are no longer subject to summary dismissal or transfer, and a career system providing for professional stability and independence has been designed, the process of implementing the law concerning the judicial career in the court system began only a few months ago. A similar statute for the Office of the Attorney General is still under preparation, and the need to find ways to strengthen the independence and objectivity of individual prosecutors without destroying the cohesiveness of the work of the office has not been systematically addressed. Meanwhile judges and the legal staff (**procurators**) of the Office of the Attorney General are operating with interim status, and functions which are to be performed by collegiate councils are being exercised by the executive authority of each organization. This situation probably is an impediment to the recruitment of additional professional personnel and especially of law graduates who may find that private practice or employment by commercial organizations is more attractive on other grounds. It certainly does not strengthen the confidence of the public in the independence and objectivity of the members of the two organizations.

Weak Administrative Support. Neither organization provides sufficient administration support to the work of its professional staff. Legal materials are not supplied. Supplies are scarce. Information on operations is not collected, analyzed and the results used to modify procedures. Neither organization has a senior, full-time person responsible for this function. In part this results from the unfilled positions mentioned above and from the lack of funding. However, it also results from a lack of attention to (and perhaps understanding of the importance of) this aspect of the organizations' needs. This situation impedes the performance of the two systems and contributes to a lack of confidence in their ability to utilize additional resources if they were to be made available.

Lack of Budget Independence. Both organizations present their budget requests to the MOF which in turn decides what to request from the National Assembly and is the channel for distributing the funds which are provided. Furthermore, neither system has a unified budget. The central offices present their requests to the central offices of the MOF and the provincial divisions to the provincial governments and the provincial offices of the MOF. The central offices do not know--much less can they justify--the overall level of resources being requested. Both organizations are considering having their provincial offices at least report to them what is the size and nature of the budget requests being made. However, neither seems to be prepared to take charge of preparing a unified budget request to the MOF much less of presenting the request directly to the National Assembly and then receiving the appropriated funds and handling them themselves. In part this reticence reflects the fact that their administrative structure is not yet prepared to meet those responsibilities. However, without the two systems' achieving greater control over the amount and nature of the resources to be provided to them, it is unlikely that they will become truly autonomous from the executive branch of government.

Lack of Unity of the Judicial System. The Supreme Court has responsibility for the jurisprudence applied by, and the operations of, the formal court system which consists of

itself, the Provincial Courts and the District Courts. However, the separate Administrative Court has the final decision concerning cases involving contracts of the government and personnel actions of the government and concerning the work and decisions of the customs and fiscal courts of the MOF. In addition, there are military and other specialized courts whose organic laws have not yet been prepared and which may or may not be subject to the review of the Supreme Court. (The decision has been made that decisions of the military courts will be applicable to the Supreme Court. However, it is not yet clear how, or to what extent, the Supreme Court will supervise the operation of the military courts. Decisions concerning the relationship between the other specialized courts and the regular court system have not yet been taken.) Then too, the Constitution provides for the creation of a Constitutional Council which is to have the power to declare laws and other government actions to be unconstitutional. Until the Constitutional Council is created the Supreme Court is to exercise that authority. Once the Constitutional Council is in existence there will be a situation in which the Supreme Court can decide cases on the grounds that a particular law or action is unconstitutional but cannot issue an order which prevents the law or action from being carried out in other contexts than that of the particular case at hand. Such power will be in the Constitutional Council whose decisions will not be appealable to the Supreme Court and which will not decide particular cases. Similar institutional arrangements exist in other civil law systems. They are not absolutely unworkable. However, these arrangements do undermine the prestige--and thus the support for the autonomy--of the regular court system. They also increase the need for well trained jurists. For these reasons it would seem advisable for Mozambique to give further thought to their appropriateness to its conditions.

Subordination of the Attorney General to the President. The Attorney General is appointed by the President and serves at his pleasure. Currently the Attorney General appoints and can dismiss all the personnel of the Office of the Attorney General including the prosecutorial staff. (Whether this power will be restricted through the implementation of a career system remains to be seen.) While it is common for the government's lawyer and its prosecutorial function to be part of, or under the guidance of, the executive branch either formally or as a matter of practice, it is difficult to find this situation compatible with the idea that the Attorney General is autonomous. Such a reconciliation will require that the structure and standards to govern the exercise of the prosecutorial function and the oversight function be particularly well thought out and supported.

Lack of Effective Control of the Police. The Attorney General and his staff exercise the prosecutorial function. They also perform many of the duties which in other civil law countries are given to the investigating judges. Thus in the first instance they are the representatives of the judicial system in guiding the work of the police to be sure that it conforms to law and produces evidence which is usable by the courts. The court system, of course, also can intervene in the work of the police through the evaluation of the evidence presented to it and through the enforcement of such procedural rights as that of habeas corpus. However, there are many complaints that the police forces (which report to the executive branch) do not observe the provisions of the Constitution and the laws--especially

the criminal procedures law. There are also complaints that the investigative work of the police is defective. While this assessment did not include the operation of the police forces, it is clear that a program for improving the operation of the justice sector will have to take into account the role of the police. Furthermore, it is hard to see how the Attorney General and his staff can meet their responsibilities unless they have more effective influence over the work of the police.

4. Lack of Information About the Law

There is little information available about what are the provisions of the law (legislation, court decisions, executive decrees) which are in force; and what information there is, is not well organized or accessible. The libraries of the court system, of the Public Ministry and the Ministry of Justice are limited to those in the Supreme Court and the immediate offices of the Attorney General and of the Minister. No system exists for making their material available to others. The library of the university law school is also deficient and is limited to the use of professors and students. The libraries are not well organized and are not being kept up to date. In fact, they are very much out-of-date. Furthermore, judges and representatives of the Office of the Attorney General are not supplied with copies of basic codes and other statutes. The Office of the Attorney General and the court system do not yet have periodic publications giving the text of their decisions or policies. The Boletín Oficial of the government (which gives the text of new laws but not court decisions) is long delayed in being published and it has no useful index.

Not everyone is troubled by this situation. Some think that the absence of legal information will force the courts to use "common sense" and that this will be beneficial to the country. Others are of the view that there are not so many laws and decisions since independence that they cannot be kept track of by reasonably energetic lawyers. However, these views do not represent the majority view and they overlook some fundamental factors. A modern society which wants to encourage private investment and commercial activity cannot rely on "common sense" to assure the rule of law. That requires reasonable adherence to precedence and rules which are known and reliable. Individual lawyers may understand the legislation and court decisions which have taken effect since 1975 but there is considerable legislation from Portugal prior to independence which under the Constitution is still valid, and there are and will be numerous complications arising as further legislation is passed and must be made compatible with the pre-existing legal background. The problems arising from the deficient system for presenting legal information and making it reasonably accessible will only grow more serious unless addressed.

5. Lack of Reliable Information on the Status of the Justice Sector and the Operation of Its Organizations

Neither the government nor the university is collecting information concerning the operation of the justice sector and its organizations. Indeed, the core organizations of the justice sector do not seem to be gathering and using information about their own operations.

As a result it is difficult to obtain reliable, precise information about any aspect of the sector--from the number of lawyers in the country, to the number and nature of cases being handled by the different courts and offices to the level of budget resources being provided to or handled by the sectors' organizations. Information about the operation and performance of the sector is not just a nicety. Without it choices are not likely to be informed and too much reliance will be placed on the assumptions and personal views of leading figures who more likely than not are jurists rather than administrators. Scarcity of resources undoubtedly will prevent the immediate creation of a sophisticated information gathering effort. However, work on preparing for the creation of such a system will need to take place if the strengthening and reform of the sector is to have a rational basis.

6. Disorganized Legislative Reform Efforts

The need for laws to carry out the provisions of the new Constitution and to provide the basis for a modern society with a revitalized private sector has been recognized by the GRM, and the MOJ has been charged with organizing the effort to produce both new and reformed legislation to meet that need. However, the office of the MOJ which is in charge of the effort is understaffed, and the effort has not produced significant results to date. There have been few analyses of the actual conditions of the country in the various areas which are presumed to need reformed or new legislation. No set of formal priorities for work has been developed. Apart from the creation of the Technical Committee of the MOJ, which consists of professors of law, no process has been established for gathering views from outside the government or involving private interest groups in discussions of proposed legislation. No training is being provided in the techniques of legislative drafting. The university law school as an institution is not involved in the effort. This situation is further discussed in the companion report concerning the Legal Reform Action Plan.

7. Weaknesses in Plans for Strengthening Education and Training

The GRM has recognized the high priority that needs to be given to training for the current and future personnel of the justice sector's organizations, and with external assistance has begun in-country training of District Court judges and has sent a few officials abroad for advanced training. The presentations to the Working Group responsible for preparing the World Bank project are largely focused on strengthening education and training--both through the university law school and through preparatory and in-service courses to be given through the proposed Center for Judicial Studies.

However, to date the discussions and planning for programs of education and training have shown some serious shortcomings. (i) They have not been based on systematic assessments of training needs, perhaps because so many of the needs are so obvious. (ii) They have not included consideration of innovative ways of instructing or of systems for evaluating the effectiveness of the instruction and for following-up with the graduated trainees to see that they have the assistance which may be necessary for them to utilize what they were taught. Indeed, the in-country training being provided to judges is very

traditional--largely based on the mere reading of texts of laws (with some use of "practicum" modules such as visits to the National Assembly during legislative debates); the planned adjustments to the current curriculum of the law school are not likely to result in much change from the fixed, lock-step approach now being followed. (iii) They have not addressed how the resources of the university and the corpus of private lawyers might be involved in the work of the proposed Center. Furthermore, the relationship between the proposed Center and its clients (the various sector organizations) has not been clarified. (iv) Consideration does not appear to have been given to linking the institutional changes planned and the efforts to reform legislation to the training needed both to carry out the new institutional arrangements and to enable the justice sector personnel and private lawyers effectively to use the new legislation which is to be introduced. Of course, all these topics could be addressed during the further preparation of the training programs to be implemented, and presumably the various interested donors will provide the technical and other assistance which may be helpful in doing so. However, the analytical and design task is very large and the desire to undertake training as soon as possible is very strong. The results may be education and training programs which are undertaken without consideration of the above listed aspects and which therefore fail to make a significant and lasting difference.

8. Limited Nature of Reforms Proposed

There are several aspects of the current plans for reforming and strengthening the justice sector which would seem to deserve further consideration. They may limit the usefulness of the programs to be adopted or make even more difficult achieving the purposes of those programs. The following appear to be the more important of them.

Over-Reliance on Portuguese Institutions. It is natural for Mozambique to look to Portugal for guidance and as a source of training and technical assistance. The Mozambican legal institutions and the very texts of many of the laws are based on or come from the Portuguese colonial period and Portuguese is the national language (at least of the educated citizens). However, that natural tendency has several drawbacks. The Portuguese system is complicated and still quite formalistic. Institutions which serve Portugal do not necessarily provide the best answer for conditions in Mozambique. Then too, Mozambique's neighbors and most likely trading partners are all English speaking and use legal systems based on common law and modernized Roman/civil law systems. Thus it would seem desirable before deciding on any important approach to reform that the Mozambique planners inform themselves of the experience in other developed legal systems and that they put increased emphasis on English language training in order to be able more easily to tap that experience.

Nature of the Administrative Court. A new Organic Law for the Administrative Court was recently adopted. It continues to combine several quite disparate functions in this institution. As previously described, the Administrative Court acts as the auditor for the whole government, as a sort of civil service review board, as an appellate court for decisions

from the customs and fiscal courts of the Ministry of Finance and as both a trial and appellate court for cases involving contracts with the government. Its decisions are not appealable. It is hard to see how one institution can meet all these responsibilities or understand the fairness and wisdom of making its decisions unappealable. Furthermore, should the proposed Center for Judicial Studies have to provide the training required by the personnel of the Administrative Court to meet its several responsibilities the Center is likely to find itself beyond its depth. Consideration might well be given to making at least the decision concerning contracts and the work of the fiscal and customs courts reviewable by the Supreme Court under certain standards.

Lack of Thorough Legislative Reform. The desire to introduce new and reformed legislation as quickly as possible may lead to short-cutting the analytical and consultative process which should be followed. Of course no legislation is meant to last forever, and problems arising from mistakes and gaps can be addressed through subsequent modifications. However, there are costs in relying on such modifications not the least of which is that people can lose confidence in the effort if the outputs seem to be defective. An example of this is the recent changes proposed for the criminal procedures code which were made without consideration of the various alternative ways of organizing the prosecution of crimes and without analysis of what has been the recent experience with the current code and of what is the meaning of that experience.

Combination of Prosecution and Oversight Functions in the Office of the Attorney General. The current law governing the operation of the Office of the Attorney General gives to that institution responsibility for both the prosecution of crimes and for assuring that the employees and agents of the government obey the laws and regulations in the implementation of their functions. Furthermore, since Mozambique does not have investigating judges, the prosecution function also includes many of the responsibilities normally given to investigating judges (or judges of instruccion as they are often called) in other civil law systems. These functions are not entirely compatible. For instance, the combination appears to require the organization to oversee itself in its conduct of the prosecution function, and it creates a very powerful presence by the executive branch inside the judicial system. While recognizing these concerns the GRM asserts that it did not have the trained human resources to staff separate organizations for each of those responsibilities. That may be a real concern; however, no analysis was made of the alternatives; and it certainly would seem possible that the burden of trying to meet both those major responsibilities through one burcaucracy which is still weak will be the more onerous path.

Incomplete Steps in Reinstating the Private Practice of Law. The private practice of law is no longer treated as an illegal action. Indeed, it is probable that the 1990 Constitution has the effect of legalizing that practice. In any event, it is the intention of the GRM to pass a statute formally reauthorizing such practice; and it has cooperated with several lawyers in preparing a draft law to create a private Bar Association. However, there are still several aspects of the proposed actions which would seem to impede full support to the private practice of law. First, the current intention is to continue to have the MOJ

and the MOF set the fees which may be charged for legal services. While this may have little practical effect since even now private lawyers appear to be charging what they want, its continuation will give the government a way of pressuring private lawyers should it choose to do so. Second, the draft law concerning a Bar Association is heavily focused on the rights and privileges to be accorded to lawyers and to standards to be used in effecting disciplinary actions. It says very little about the potential service functions of the Bar--for instance how the Bar would foster the additional training of its members. This dimension should not be treated as secondary. Third, the draft law concerning a Bar Association provides that only fully titled lawyers may be members. Apparently the existing judicial technicians and judicial assistants would remain registered with INAJ and be able to provide some legal services at least until there were enough lawyers to go around. Although it is understandable that the private lawyers are concerned about restoring their prestige, this limitation on Bar membership would seem to be self-defeating. Given the acute shortage of lawyers it is unlikely that the judicial technicians and judicial assistants will be phased-out soon, and if they are going to remain an integral part of the practice of law it would seem better to have them subject to the same discipline and supporting the same programs as are the fully titled lawyers.

Over-Focus on Need for Fully Titled Lawyers. There is no question that there is a serious shortage of lawyers in Mozambique and that placing importance on producing more and better trained lawyers is an important priority. However, it would seem possible that there has been an overestimation of the number of fully titled lawyers who are really necessary. This would be a very serious mistake since the deficit is large, the current production of new lawyers is small, and the cost in time and money of producing new lawyers is high. Furthermore, the conclusion that it is fully-titled lawyers who are most urgently needed probably contributed to the decision of the university law school not to prepare a program to produce more judicial technicians. Certainly it seems odd that the estimate submitted to the Working Group showing a need for about 800 lawyers included only 150 for the private practice of law and only 120 for the court system staff, as estimated in a law school document. It would seem worthwhile to review the basis for the estimates of the need for legally trained personnel by the various organizations of the justice sector to see whether more responsibilities could be met by fewer trained personnel operating under the overall guidance and ultimate responsibility of lawyers.

9. Limited Absorptive Capacity for Assistance

There is no doubt that Mozambique needs and is interested in having external assistance to its justice sector. Several donors have expressed interest in providing such assistance. However, there is a question of how much assistance the Mozambican justice sector can absorb. Portuguese institutions and the Danish aid program already have undertaken work. The World Bank is in the final stages of preparing a very large project which will include work with the justice sector. U.S.A.I.D. and the Swedish aid program are exploring how they might become active as well. Anticipating the need for coordination among the organizations of the justice sector and among the actual and potential donors,

the World Bank has fostered the creation of a Mozambican Working Group and a series of consultations among the donors.

There are indications that the absorptive capacity is not too great. The Danish aid program is behind schedule. The Portuguese program has only two of its many eligible activities underway in part because the Mozambican institutions have not presented concrete plans for carrying them forward. (According to the MOJ, a post-graduate training program for 4 judges in Portugal will move forward in September 1993, if the scarcity of travel funds can be redressed.) Our own work in conducting the three consultations was made difficult by our often not being able to get appointments with key officials in a timely way. The problem was not that such officials did not want to meet with us. Rather it was that they were very busy with many things. The difficulty was compounded by the fact that the MOJ, which is responsible for dealing with donor agencies, is not adequately staffed to do so.

The level of resources to be provided for training and technical assistance under the World Bank projects is many times larger than the resources currently being utilized by the sector institutions for activities other than the payment of salaries and normal operating expenses. The scope of the project is broad--involving all the core institutions of the sector and others as well. In its project planning the World Bank seeks to address this problem by providing substantial resources to contract for external and Mozambican professionals to staff a project implementation unit. We understand that the Mozambican Working Group is resisting devoting so much funding to that purpose and would prefer to use those funds to expand the project's support for in-country training. Presumably some compromise will be reached which will provide enough support to have the World Bank funds used in a reasonably prompt manner. However, many of the basic steps needed for the Mozambican institutions to be able to make good, lasting use of the resources have been postponed. For instance, a sector strategy and operations are to be produced later.

The results of all these factors is that one should exercise considerable skepticism and caution in concluding that activities additional to those already included in the Danish and World Bank projects can be well utilized. The burden of proof should be on the proposer of such activities.

V. PROGRAM SUGGESTIONS

A. Elements of a Strategy

Given the conditions facing the justice sector in Mozambique it is clear that there are serious problems facing all aspects of its operation and that addressing them all would require a larger effort than it is likely interested donors could provide or the Mozambican organizations could absorb. Choices will have to be made and priorities set. That process has begun in the preparations for the proposed World Bank project. It will need to be carried further. In doing so it would be advisable to address the questions and concerns which have been raised in Part IV concerning the GRM's proposals as set forth in the February 1992 workshop.

We suggest that the following approaches be used in the further development of a strategy for the strengthening of the justice sector of the country.

1. Focus on Core Justice Sector Organizations

The law (and the lawyers who serve it) is relevant to most aspects of life and to all the operations of the public sector. Since Mozambique is in the process of building both a government structure and a national identity and economy there are endless tasks for the legal system to address. However, basic to the rule of law is the fairness, objectivity and effectiveness of those institutions whose tasks are to conceive, enunciate and implement the law. Thus priority should be given to strengthening those institutions. In the case of Mozambique these core institutions are the independent court system, the autonomous Office of the Attorney General (especially as the prosecutor and investigating magistrate), the Ministry of Justice (particularly in its functions of fostering research about and reforms to legislation and of providing training for the other justice sector organizations), INAJ (especially as the source of legal assistance for the needy), the proposed Bar Association as the spokesman for lawyers and especially for those in private practice, and the university law school as the source for the critical legal manpower which will be needed. There are many other institutions which are important to the rule of law--e.g. the Administrative Court, the judicial units of the MOF, the Registries and Notaries, the prison system, the police forces, the legal departments of the various government agencies. However, their performance is somewhat less crucial.

2. Emphasize the Institutional Strengthening of the Core Organizations

The need for additional trained personnel, and especially for lawyers, is real and appreciated as is the need for the support for their legal work. Thus the plans of the GRM place great importance on training to produce programs and upgrade lawyers and include increasing the quality and accessibility of legal materials and information. However, it is also necessary to assure that the professional personnel work in organizations whose

structure, resources and mode of operations provide them the necessary support. An organization which is not clearly organized, without reliable personnel policies, without control over its own resources and not informed about its own operations is not likely to be (or be seen as being) objective, independent and effective. While the proposals of the GRM do include the institutional strengthening of the core justice sector organizations they leave the impression that this may be a secondary priority to the creation of new legislation and the preparation of additional lawyers. This should not be the case.

3. Foster the Integration of Legislative Reform with Institutional Improvement and Training

The GRM is aware of the need to prepare new legislation to carry out the provisions of the 1990 Constitution and to provide a modern legal infrastructure for a market economy. In carrying out the program for preparing such legislation it will be important to give priority to the legislation which is necessary to accomplish the institutional strengthening of the core justice sector organizations. This implies giving priority to work on: a new organic law and a law providing a career service for the Office of the Attorney General; the law to re-establish formally the private practice of law and to create a private, autonomous Bar Association; and a new organic law for INAJ which focuses on the task of providing legal assistance to the needy. The work would include the analysis of the issues facing each of these institutions, the necessary consultative process and the drafting of the laws.

It also will be important that plans for the training program reflect the priorities of the legislative reform program. Thus, in addition to training in the content of the existing and new legislation, the program should include training in new procedures and techniques adopted in the new legislation. Examples would be training in personnel administration, in the management of prosecutorial discretion, and the techniques of organizing and administering private associations and bar activities. In short, legislative changes and training activities should be considered one effort rather than separate ones. Plans for both should be consistent.

4. Encourage Further Analysis and Reconsideration of Certain Aspects of the Current Sector Program

In the part IV of this report we have identified several aspects of the current plans for strengthening the justice sector which seem to deserve further consideration and, perhaps, revision. The following in our opinion are the more important.

- Because of historical and language reasons there is a strong tendency in Mozambique to look to Portugal for institutional models and for training and technical assistance. While obtaining assistance from Portugal is often appropriate the experience of other countries may be more useful on certain topics if properly understood and applied. There should be a conscious effort

to seek information about such experience and how it might be adopted to the needs of Mozambique.

- Both the prosecutorial and the government oversight functions continue to be assigned to the Office of the Attorney General. This combination may cause problems and should be reconsidered. The approach taken by other countries to this question should be analyzed.
- The creation by the Constitution of a Constitutional Council and an Administrative Court apart from the regular court system may cause conflicts and undermine the independence and prestige of that system. Again, the experience of other countries in dealing with similar questions should be analyzed.
- The attention planned to be given to the system of Registries and Notaries reflects the traditional importance given to these institutions under the Portuguese legal system. However, that tradition may be preventing fresh thought as to how the functions performed by these institutions could be performed in ways requiring fewer legal professionals.
- The preparation of additional lawyers may be the first priority of the program for strengthening the operation of the justice sector. However, the estimated deficit of lawyers and the time and expense of producing fully titled lawyers are so great as to make closing the gap highly unlikely for the foreseeable future--if ever. Therefore it would be wise to consider whether legal professionals with lesser training could be expected to fill many of the positions now believed to require the services of a lawyer. If that were to be the case plans for further development of the law school, and the Center for Judicial Studies should include the preparation of such professionals.

5. Emphasize the Analytical Preparation for and Evaluation of Training Programs

Training of the personnel for the justice sector is of great priority, and the GRM is anxious to get a large training effort underway. Training is the major focus of the project being prepared for financing by the World Bank. However, the plans for these training efforts have several important weaknesses which are discussed in part IV above and in the companion report on a training plan and the preparations for the Center for Judicial Studies. Among the most important are the absence of systems to produce ongoing assessments of training needs and for evaluating the quality and the impact of the training being provided and the lack of attention to using techniques of learning other than the most traditional. Future work on the training program should address those weaknesses.

6. Assist Concrete Activities and Their Evaluation During the Near Term

The preparations for a program for the improvement of the justice sector have not reached sufficient concreteness and prioritization that one with confidence could project what will be the impact of the various activities which are being proposed. The World Bank project recognizes the tentative nature of much of the planning to date by calling for the preparation of a sector strategy during the early life of its project and for the preparation, and subsequent revision, of annual workplans to guide the use of the resources to be provided under the project. That approach also will permit the World Bank to adjust the level of resources being provided to take into account the experience it is having in implementation. This approach may be the most practical one for the World Bank given that its large Capacity Building project is scheduled to be authorized in the near future. However, the state of preparation does not give a basis for a regular A.I.D. project.

Although an attempt to prepare a formal A.I.D. project may not be advisable at this time, there is a basis and need for A.I.D.'s involvement in the work of the justice sector. This could best be carried out through activities directed at particular, concrete outputs and the accomplishment of necessary analytical work. That approach would be consistent with the intent of the current A.I.D. project. Those activities should be evaluated as part of the process. With the experience in implementing those activities over the next year and with the experience of the World Bank in starting up its own project, A.I.D. could consider the preparation of a regular project for FY 1994.

B. Activities Suggested for A.I.D. Support

The following is a summary statement of activities which could be given support by A.I.D. The activities respond to the strategy suggestions made above. In general the activities are ones for which the experience of the U.S. legal system and U.S. sources of training and technical assistance would be likely to be helpful. They are focused on what might be done during the next year or two. They do not include several topics which are of importance to the core justice sector institutions and their responsibilities. However, for one reason or another the topics do not seem appropriate for A.I.D. support at this time. They are:

- working with the law school on its curriculum and other reforms since both the World Bank and DANIDA will have very major programs with that institution and there does not seem to be much interest in establishing additional law schools;
- working on civic education since DANIDA will be cooperating with the program of INAJ, and the possible use of the Bar Association and other non-government groups in this field is not yet even under discussion;

- working on the organization and dissemination of information on the law since, again, the World Bank and DANIDA will have major programs on that topic.

The omission of these topics should not be considered final since the basis of the rationale for not including them may change. This could be especially true in the case of the topic of information on the law since its demands may prove to be well beyond the capability of the World Bank project and DANIDA to meet and since the US has had extensive experience on the topic domestically and A.I.D. has supported work on the topic with justice systems in the Latin America region.

1. Consultations and In-Country Seminars

Leaders of the Mozambique justice sector have expressed their approval of the use of in-country seminars involving Mozambicans and external experts who jointly prepare and discuss issues. They see this approach as useful to clarify problems, to transfer information on experiences and to reach guidelines for the development of activities. Thus it would be appropriate for A.I.D. to support the preparation and holding of such seminars on key topics. The World Bank project will have funds for such work, but they are not likely to be available before the middle of next year.

The following topics include aspects of the current approach to the justice sector which deserve reconsideration as well as concepts which require further discussion before programming guidelines usefully can be prepared about them:

- the requisites for assuring independence of the court system and the autonomy of action of the Office of the Attorney General;
- the nature and techniques for implementing the prosecutorial function, including its relation to the police forces and the trial courts;
- the nature and techniques for implementing oversight of government operations;
- the use of paralegal and non-lawyer professionals to meet some types of legal responsibilities;
- the relationship between the court system and other judicial type institutions such as the Constitutional Council and the Administrative Court;
- alternative approaches to providing legal assistance to the needy;
- the role of the Bar Association as a service organization and representative of the private legal sector;

- the use of conciliation and arbitration techniques by the court system;
- techniques for evaluating the impact of activities in the justice sector (including training).

Conducting in-country seminars on all these topics probably would be too great an undertaking for the next year. However, an order of priority can be established, and the organization and conduct of the seminars can be facilitated through establishing an on-going relationship between the Mozambican justice sector organizations and a U.S. intermediary. Such an intermediary should have access to talent from both the U.S. and civil law jurisdictions.

2. Technical Assistance to Conduct Detailed Institutional Analyses of and Design Specific Activities to Strengthen the Administration of the Court System and the Office of the Attorney General

The United States has developed the career of court administrator and has extensive experience in improving the administration and operation of court systems and prosecutors' offices. Indeed, within this discipline sub-specialties have developed which are concerned with personnel management, budget analysis and preparation, financial management and controls, records management, data collection and management and communications systems. This U.S. expertise has been tapped for work in several civil law jurisdictions in Latin America. Thus there is experience in applying concepts and techniques developed in the U.S. in less developed countries. A.I.D. could support the conduct in Mozambique of analyses by experienced practitioners of the operation of the two core justice organizations. These analyses would include specific recommendations which could be used both as the agenda for further discussion seminars and as the structure for a major activity. US sources of advice for its implementation could be arranged easily.

3. Technical Assistance in the Design and Implementation of the Training Program

The Danish aid program will conduct a substantial program with the university law school, and the project of the World Bank will provide support for strengthening legal education and for the preparation and conduct of in-service training to be provided through a Center for Judicial Studies which is to be created. However, the World Bank will not have funds available to support training activities before its project takes effect next year and even thereafter it estimates that the funding requirements to carry forward the full education and training program will be more than it can supply. Therefore the World Bank encourages other donors to supplement its efforts. A.I.D. could usefully do so.

Since the Danish aid program is paying so much attention to the university law school and since there are doubts about the willingness of the law school to undertake more thorough curriculum reform, it would seem advisable for A.I.D. to focus its effort on the

preparation and in-service training for personnel of the justice sector operating institutions. The US federal and various state court systems have introduced such training programs for their personnel; and A.I.D., and firms and organizations working with A.I.D., have had experience in fostering the introduction of modern training programs into justice systems in developing countries with civil law systems. Thus A.I.D. might well provide technical assistance in the near term to:

- evaluate the in-service training activities which have been conducted to date and make recommendations for their improvement;
- design a system for performing on-going training needs assessments for the professional and administrative staffs of the several sector organizations;
- design curricula and instructional materials which address the training needs identified and which reflect the findings of the evaluations of training needs identified and which reflect the findings of the evaluations of training activities underway; and
- design the organizational structure and operating standards for the proposed Center for Judicial Education.

Should the technical assistance produce useful recommendations and materials A.I.D. could also fund trials of their use in order to gain experience prior to the full implementation of the larger effort to be undertaken with World Bank support. Over the longer term A.I.D.'s assistance to training would best be used to support the design of training which is necessary to implement the programs which may result from the seminars discussed in (1) above leaving to others the provision of budget support for on-going, in-service training.

A proposal for support of the training program of the justice sector organization is further described in the companion report on a Training Action Plan.

4. Technical Assistance for Research and Reform of Legislation

The GRM places a very high priority on the production of new and reformed legislation. However, the preparation of new and reformed legislation is receiving less attention from donors than is the preparation of training programs, and the World Bank project does not anticipate including in its project as significant a level of resources for that work as it does for training. Given this situation it would be appropriate for A.I.D. to provide technical assistance to assist the effort. There is great deal of experience in the United States with the preparation of reformed legislation, and there are experts on all conceivable subjects. Furthermore, A.I.D. in cooperation with international agencies and academic resources from Latin America has sponsored such legislative reforms in several civil law countries in that region. US organizations also are familiar with the reform

movements that have been taking place in the civil jurisdictions of Europe--principally in the fields of commercial law and the criminal procedures.

However, the assistance should not just consist of supplying experts to draft reformed and new statutes. It would be better for the assistance to begin with a focus on creating a system for conducting the research, the consultations and the capacity for legal drafting which will be necessary for the proper conduct of an effort which will continue indefinitely. This will require attention to the strengthening of the MOJ and to achieving coordination of the work of that organization, the university and, potentially, the private Bar Association. It also will require attention to creating techniques for providing training in legal drafting. Proposals for such prioritization and for supporting technical assistance are described further in the companion report which represents a Legal Reform Action Plan.

5. Technical Assistance to Design and Implement Activities Carrying Forward the Conclusions of In-Country Seminars

The main purpose of the in-country seminars recommended under (1) above is to provide guidance for the preparation and conduct of activities. That guidance is not likely to be implemented without outside encouragement and financial and technical support. Since by their nature the seminars will be dealing with topics or questions which are not already on the agenda of other assistance agencies (or are presented in only a highly generalized way) the burden of assisting the follow-through may well not be picked up by those other agencies. Thus there will be good reason for A.I.D. to assume that burden. This is especially true of those topics which are of particular concern to A.I.D. such as fostering a strong private bar and encouraging impact evaluations as an implementing tool.

6. Design of Possible Follow-on Project

While it is not advisable to try to prepare a formal A.I.D. project at this time as the vehicle for providing assistance to the justice sector, the eventual use of that mechanism would have several advantages. It would force the making of choices and the adoption of priorities and give concrete goals to be achieved. It also could justify the providing of a significantly higher level of resources than is likely to be available through support just for particular activities. It would call for the adoption of reform and other commitments on the part of the GRM and the participating sector organizations in return for the increased level of resources. Thus preparing such a project itself would be a form of assistance to the justice sector.

The activities which are most likely to contribute to the preparation of a formal A.I.D. project are: (i) the collection of key baseline data; (ii) the evaluation of the activities undertaken in the sector during the next one to two years by the several interested donors including A.I.D.; (iii) the preparation of the sector strategy and annual work-plans under the World Bank project; (iv) the coordination of the work of the several sector organizations; and (v) the completion of the analytic and design work referred to in the above activity

descriptions--including the seminars of outstanding issues and topics for reconsideration. Since the World Bank is likely to devote attention to (iii) and (iv) and each donor presumably will address (ii), A.I.D. might best focus its support on (i) and (v). The collection of key baseline data could be part of the effort to create an information collection and management system for the core sector organizations which ideally would connect any A.I.D.-assisted work with the research program of the MOJ and the university as well as the World Bank-assisted effort to encourage the use of computerization by those sector's organizations.

PERSONS INTERVIEWED

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US Embassy**

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US Embassy**

**Julius Schlotthouer
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**John Miller
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**Charles North
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**Luisa Capelao
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**Gerald Mc Laughlin
Public Affairs Officer
US Embassy**

**Edward Kemp
Assistant Public Affairs Officer**

MOJ

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**Aires du Amaral
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**Salvador Eugenio Vazima
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**Victor Eugénio Sineia
Director
National Directory of Registries &
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**Joaguim Salomao Mamhique
National Inspector
National Directory of Registries &
National Services**

**Angelina Vitorina Erneto Homo
Chief, Department of Administration &
Finance**

Court System

**Jose Norberto Carrilho
Vice President of the Supreme Court**

**Luis Filipe Sacramento
Magistrate of the Supreme Court**

**Alberto Santos Nkutumula
President of the Urban Provincial County
of Maputo**

**Rafael Sabastao
President of the Urban District No. 1
Court of Maputo**

**Four Judges of the
Community Barrio Court in Maputo**

Administrative Court

**Juan Manuel
President**

Attorney General's Office

**Sinaí J. Nhatitima
Vice Procurador General**

**Erasmus Nhavato
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**Aliro De Oliveira Ramos
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Brazilian Embassy**

**Nina Berg
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Others

**William O. Rogle
Fulbright Professor
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**Beverly M. Carl (by telephone)
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**Dr. Benjamin J. Tamele
Attorney, Maputo**

**Henrique Carlos Machele
Attorney, Maputo**

**Antonio Alnano Silva
Attorney, Maputo**

DOCUMENTS CONSULTED

DOCUMENTS - GENERAL

1. Constitution of the Republic of Mozambique, 1990
2. Draft Law establishing Bar Association and regulations concerning practice of law
3. Papers presented at February, 1992 Seminar sponsored by World Bank
4. Appraisal Report of Institutional Support to Teaching and Administrative Law in Mozambique. May, 1991 by DANIDA
5. Draft Mozambique Capacity Building Study of October 30, 1991 by World Bank
6. Project Paper for Mozambique Democratic Initiatives Project by USAID/Mozambique 1991

DOCUMENTS - MOJ

1. Decreto Presidencial No. 69/83 re responsibility of MOJ
2. Diploma Ministerial # 42/85 approving structure of the MOJ
3. Diploma Ministerial #115/91 giving list of approved positions
4. Diploma Ministerial No. 66/87 giving regulations for professional careers in Ministries of Justice, of Labor and of Finance
5. Draft Organic Law for National Directory of Registries and Notarial Services
6. Law # 3/86 Creating National Institute of Juridical Assistance
7. Decree # 8/86 of Council of Minister giving Organization of National Institute of Judicial Assistance

DOCUMENTS - COURT SYSTEM

1. **Law 10/92 - Organic Law of the Judicial Tribunal**
2. **Law 10/91 - Structure of Judicial Service**
3. **Law 4/92 - Organic Law of Community Courts**
4. **Diploma Ministerial 32/89 - Regulation of Career of Judicial Functionaries**

DOCUMENTS - PROCURADURIA

1. **Law # 6/1989 Organic Law of the Procuraduria Geral da Republica**
2. **Despacho of April 1991 giving list of approved administrative positions.**

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LEGAL EDUCATION ACTION PLAN

Prepared by:

Hunter Fitzgerald

October 21, 1992

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Annexes:

- 1. List of Persons Contacted**
- 2. International Seminar on Juridical Training in Mozambique (Informal Translation)**
- 3. Terms of Reference for Technical Assistance - Legal Education**

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Chapter I

INTRODUCTION AND BACKGROUND

Mozambique has suffered from underdevelopment, poor policy planning, adverse elements such as drought and a prolonged insurgency. It has been estimated that over 50 percent of the Mozambican people live in absolute poverty.

Recently the Government of Mozambique (GRM) instituted an economic reform program which involved changes to an emerging private sector and movement towards political liberalization. Nevertheless, the country still is one of the world's poorest countries (per capita income of \$80-100 per annum) with almost 35% of grains in the markets coming from aid programs.

The objective of this consultancy was to facilitate legal sector reform by providing specialized technical assistance to the GRM and other entities involved in the provision of legal services and administration of justice. It was designed to undertake a sector survey and develop action plans in the areas of legal education and legal reform. This is the legal education action plan section.

A legal system established by the Portuguese prior to independence still functions under a civil law code. The economic reform program has brought about an acute awareness of the need to reform the law and restructure the legal system. Furthermore, the problems are exacerbated by the severe shortage of trained legal personnel, low levels of education, and almost a complete lack of basic materials required for the administration of justice. Within the context of the current situation the legal profession is not, and probably will not be able, to meet the needs of the populace in terms of adequate justice sector services.

The contractor's scope of work states (see Attachment A):

"The general objective of the legal education action plan will be to assist the Ministry of Justice, Supreme Court and other entities involved in the provision of legal services to develop an overall action plan to meet immediate legal education needs in Mozambique."

This report is organized to present the following:

- . **Prioritized needs assessments and plans**
- . **A Description of the Judicial Education Center**

- . Selected United States organizations suggested to participate in the program
- . Identification of specific training activities to begin participation.

The contractor's methodology utilized to arrive at suggested actions involved:

- . Review of documents form the GRM, A.I.D., other donors, and private sources
- . Interviews with GRM and U.S. government officials and private sector individuals (see Attachment ?)
- . Analyses and interpretations of data and statistics provided
- . Site visits to actual training courses and institutions, including roundtable discussions with students
- . Observations of tribunals in operation
- . In-depth interviews with other donor personnel
- . Preliminary Mission/World Bank meeting in mid-June 1992 to discuss tentative findings and suggestions to USAID
- . Mission and counterpart debriefings prior to departure
- . World Bank debriefing in Mid-July 1992.

The report presents some suggested prioritized needs assessments and plans. It provides options; suggests actions and target groups; discusses other donor programs; suggests possible USAID inputs; discusses legislative reform training, other donor training programs and law faculty improvement; and estimates A.I.D. technical assistance needed and sources of participant training. In Chapter III, further concepts and information about the establishment of a Judicial Education Center (CEJ) are presented to clarify this proposed system to deliver training to the appropriate target groups. Chapter IV suggests some United States organizations to help provide technical assistance, develop U.S. university linkages and information exchange mechanisms. Chapter V identifies about ten possible training activities the Mission may wish to consider in the short, medium or long term. Attachments are included which list persons contacted, an informal translation of a GRM February Seminar Summary, the Seminar Schedule and other pertinent documentation.

Chapter II

PRIORITIZED NEEDS ASSESSMENTS AND PLANS

This chapter discusses four options in training available to USAID/Maputo and goes on to suggest some seven possible actions for USAID to follow. Then it proposes a tentative prioritized list of target groups and reviews other donor programs with a brief discussion of relationships.

A. Options Available to USAID/Maputo

1. Direct assistance (gap filling) to planned project - start early 1993.

This would be the easiest option since the Working Group (WG) has put together a very ambitious training plan with the World Bank (WB) funding some \$240,000 per year from 1993-1997. About two years ago justice sector organizations were asked to submit their training needs and requirements. This was consolidated into a large proposal and then was redesigned after the February Seminar (see Appendices C and D). The Mozambicans are to be congratulated on their progress so far. They have identified the individuals in the appropriate organizations who need training. The plan has several problem areas such as:

- a. High unit cost per person month of training (see part 4 below for an analysis).
- b. Lack of any setting of priorities.
- c. Training was apparently proposed for a large number of persons not yet hired, nor was money budgeted to fill those positions. Based on subsequent statements from the MOJ, this proposed training appears to have been dropped, at least in part. (GRM performance in this area of new personnel is slow and fiscally conservative, and constrains planning for training).
- d. The training planned does address some of the constraints caused by unqualified personnel but still places high emphasis on increasing the numbers of lawyers (licenciados).
- e. In 1995 the Judicial Education Center (CEJ) appears in the plan but its development and funding are not covered in depth. Chapter IV of this final report provides an overview of such a center.
- f. The GRM feels the WB funded program has excessive TA for implementation and wants to cut the TA and spend the money for local training. This is a sensitive issue.

- g. Some limited training TA is included in the WB funded program but the contractor feels it is not enough since the program will be mainly local training.
- h. Another \$1.155 million, with \$160,000 funded by the WB has been proposed to send persons to Portugal. Some of this training is already in protocols agreed upon between the GRM and Portuguese Ministries of Justice. There are conflicting claims about this program and the MOJ, WB, and Portuguese embassy are in the process of working these out currently. The MOJ's view is that funding for these trainees is inadequate.
- i. Up to now other donors have not confirmed an interest in contributing to the WB funded plan.
- j. There continues to be rivalry between institutions and a reluctance to turn over the training responsibility to the MOJ. Part of this is historical.
- k. The MOJ will be responsible for coordinating training but to-date the director's position of the Training Division is vacant and the Minister has not appointed a person yet. This will be a crucial appointment. Additionally if CEJ is to function it will need at least 2 more professionals - a business manager and an academic coordinator (see Chapter IV). The funding for, selection of, and training of these three key individuals will be of paramount importance.

Conclusion: The proposed program as outlined attempts to train a large number of individuals at a relatively high cost. There are many important areas to be decided in the near future. Further analysis and careful planning are needed.

Suggestion: A.I.D. should not attempt to fill the funding gaps in the suggested program.

- 2. Provide limited TA and training for remainder 1992 and into early 1993 (see B below for suggested actions).

The purpose of the A.I.D. Mozambique Democratic Initiatives Project is to facilitate increased Mozambican understanding of strategic options and related implementation requirements for democratic initiatives in the areas of multi-party elections, the institutionalization of an independent judiciary and the decentralization of government.

The WB along with other donor activities add up to a significant set of inputs into the justice sector. The A.I.D. project assumes the areas of analysis, which includes this contract, are important to sustainable long-term political and economic development.

Conclusion: The A.I.D. Mozambique Democratic Initiatives project would be the appropriate modality to provide selected technical assistance and training during calendar year 1992 and into early 1993.

Suggestion: A.I.D. utilize resources from its Mozambican Democratic Initiatives project to assist the GRM begin its justice sector activities. See B below for possible USAID inputs.

3. **Depending on the success of # 2 above, complement planned activities with U.S. TA and institutional support in 1993-4.**

The start-up activities contemplated for USAID support are labor intensive and will require adequate time to accomplish objectives. One of the difficulties with the justice sector leadership is its impatience and desire to do everything for everyone immediately. There is a positive desire to rectify all of the past injustice now.

Conclusion: The justice sector leadership is highly motivated and desires to implement its program rapidly.

Suggestion: As the A.I.D. inputs are in place and complete evaluation of accomplishments and/or progress are finished, and if the evaluations prove to be positive, then, A.I.D. may wish to consider further support to specific and high priority target groups. For example, current unqualified district level judges and prosecutors need as much training and support as possible.

4. **Stay out of the justice sector unless some difficult reforms are to be instituted by the justice sector.**

Another option for A.I.D. is to not support the justice sector since so much is contemplated by the GRM and other donors. There are some constraints which would substantiate this option. Some of the constraints are:

- . Limited number of qualified personnel available to implement the program.
- . Current staff is over extended. The same small group seems to do everything.
- . The plans reviewed do not demonstrate interest in the development of a paralegal cadre. However, we found later that such plans are being formulated, consistent with the MOJ's stated interest in the training of paralegals and other non-lawyer personnel.
- . There is an overemphasis on the law degree.

- . A formal and cumbersome system which could be reformed but has not been changed.
- . A Faculty of Law which has not been responsive to filling the needs of the sector in terms of numbers of graduates.
 - very few curricula reforms proposed - the last major changes were to add Portuguese, English and physical education.
 - Five years of university work plus a year of additional training after graduation (there is no desire to change this).
 - Traditional curriculum and instructional methodology.
- . Importance given to formality.
- . The training plans reviewed by the contractor did not clearly anticipate training key court administrative staff who in the civil code system make the system work on a day-to-day basis. The MOJ has since indicated that legal secretaries/clerks will receive training in Portugal. This area would be addressed in more detail by the MOJ in a written document.

Conclusion: The sector does not lack problems or constraints as shown above but there are some positive forces at work which could have an impact on the sector.

Suggestion: A.I.D. should not stay out of the justice sector. It should consider providing limited TA and training support as suggested above. This work could include further analyses and study which in turn could lead to an actual AOJ project in the future.

B. Suggested Actions for USAID/Maputo

The contractor has identified eight areas which USAID/Maputo may wish to consider for support. They are:

1. Work with and develop key personnel.

Within the justice sector the higher level officials receive many invitations to travel to other countries to observe and/or meet with officials. During our consultancy five key justice figures were out of the country on such trips. The key persons for the training activities will be Dr. Ana Pessoa (recently named as Director of the Training Department), the academic coordinator selected for the CEJ, and the CEJ business manager. These three individuals should be provided with short training in the CEJ in Portugal and at the California Center for Judicial Education and Research. Study/observation tours are not recommended. Short courses and OJT (on-the-job-training) are what is needed. The WB has already identified Dr. Paul Li, the Director of the California Judicial Center, as a consultant. He has experience with A.I.D. Administration of Justice activities in Asia and

Latin America. The training to be accomplished in Portugal, for which funding is currently lacking, could well be funded under the protocols already established between the respective MOJs, the USAID/Maputo project, or the World Bank project. A conservative program is suggested in terms of participant training. Since there is such a shortage of qualified staff, it makes more sense to concentrate on in-country training.

2. Train trainers.

In conjunction with establishing the CEJ (see # 3 below), a cadre of trained trainers has to be established. Up until now it appears a large portion of in-country training has been carried out by the Supreme Court justices, MOJ staff, and university professors. These assignments, after being approved in advance by the GRM, have been considered extra duties and the instructors have been given "subsidies" which have ranged from low levels (\$1.50 U.S. per hour) up to relatively high (\$70 U.S. per hour of instruction). The tendency to use the latter levels has increased estimated training costs.

Efforts should be made to expand the pool of instructors and have at least two to three qualified and trained trainers in each subject area. It is estimated that there are 15 subject areas with some overlaps where the same person may be able to cover two or three areas. About 40-50 trainers will be needed to accomplish the intensive program planned. Due to the lack of available personnel and cost constraints the MOJ may decide to lower the number of instructors. It will be an internal GRM decision. An estimate of 10 to 12 has been outlined.

The Consultant found the instruction in courses observed to be the traditional lecture method with the students listening passively and with little or no participation. Considerable "code reading" aloud was done by the instructors and/or students. Modern teaching methods and any level of instructional supervision were not observed. The problem is not that the instructors want to teach poorly, it is that they have not been taught how to teach well. The course coordinator informed the contractor of plans to improve the quality of instruction by introducing role playing in court "dramas" and visits to actual courts in session with follow-up critiques.

It is estimated that about 12 person months of TA will be needed to train trainers. This should involve a variety of consultants to service pedagogical and subject area training needs.

3. Estzblish system -> Judicial Education Center - CEJ

A.I.D. has been involved in the establishment and strengthening of judicial training centers in Latin America with its administration of justice initiatives in Guatemala, Panamá, Colombia, and Chile. The Mozambicans have expressed a desire to follow up the Portuguese model of the CEJ as soon as possible. They want the CEJ functioning by 1995. The consultant feels this would be appropriate. Much of this should be funded under the

existing protocols between the two respective MOJ's. The California Center for Judicial Education and Research, headed by Dr. Paul Li is a model which has been successful because the California judiciary feel it is their Center due to the extensive use of advisory committees. The Mozambicans appear to function well under this modality. They are currently organized under a series of councils and committees up through the Council of Ministers.

In item # 2 above, it is suggested to train key staff in both Portugal and California. This section further stipulates that both the CEJ in Portugal and the California Judicial Training Center be tapped for technical assistance. These assignments need to be carefully coordinated with cooperative efforts to accomplish objectives. The WB began preliminary terms of reference for Dr. Li. The Checchi home office staff verified the availability of California Center staff. Here again, we urge the allocation of adequate resources to have the consultant in-country long enough to be effective and provide ample logistical support such as secretarial services, interpreter and translation services, and maintenance. Furthermore, it is suggested that the consultant selected have a stopover in Portugal to visit the CEJ and meet with staff there prior to arrival at Post.

Utilizing approved rates and this current Delivery Order as guides, the cost for a 50-60 day consultancy would be approximately \$50,000 - \$55,000.

The World Bank estimated the costs shown below for the SLCC/Project:

- . Foreign lawyers and other professionals - 14,000/m
- . Local consultants - \$3,500/m (lawyers)
- . Other professionals - \$2,500 - 1,500/m
- . Training
 - local lawyers/\$1,500
 - paralegals and staff/\$1,000
 - clerks and other staff 500
 - study visits \$4,000-\$8,000
 - graduate level courses \$29,000/year
 - Maputo seminars with foreign professors \$45,000-\$65,000
 - Maputo seminars with local professors \$35,000

4. **Begin limited training activities under the new system**

It is difficult to predict how fast the GRM can mobilize, particularly the MOJ, to carry out items 1-3 above. However, if things do move and take shape faster than expected, then USAID may wish to fund an actual training program. This might be particularly

appropriate and useful to use as a practice teaching experience for trainers who are being trained. It may also be a valuable training ground for the proposed CEJ staff. The current five month course, funded by the U.S. Embassy, is costing about \$70,000 for 25 district level judges. The MOJ informed USAID/Maputo that the cost of that course was substantially more than \$70,000. The WB funded program shows \$182,000 for five months of training for 40 persons, which also appears somewhat higher. These costs needed further careful analysis.

5. Complete training needs assessments for all levels.

As part of the scope of work for this consultancy there is to be a prioritized training needs assessment completed. The consultant has worked on this. There are some circumstances which impeded progress. They were:

- . The original requests of two years ago included training and programs for everyone. No limits or priorities were established.
- . The WB had the Working Group resubmit its plans after the February seminar.
- . The WB then "approved" the list in Washington but did not fully fund it. WB funding for local training is limited to \$240,000 per year, with substantial short falls each year.
- . A meeting was held and the WG then requested other donors to fill in the gaps.
- . The WG sent a Memo to the WB questioning the level and length of TA to implement the program. The WG wants to cut TA and use the money for local training.
- . There is quite a bit of refining needed in order to have an adequate plan. At present the Mozambicans feel they have completed an adequate needs assessment. They have really identified people to be trained but have not finished a complete assessment yet.
- . The issues raised should be addressed so there is an understanding between the GRM and the WB. After this happens much can be accomplished. During July of 1992 the GRM and the WB are scheduled to negotiate these problem areas noted above. As soon as there is some consensus or agreement, then a prioritized training needs assessment can be completed.

6. **Develop job descriptions for target groups including training, skills, and experience needed.**

The laws have established only general guidelines in relation to job descriptions of professional personnel. There is a need to develop personnel manuals to classify professional level positions in more detail including training, experience and special skills needed. This may be an area of interest to A.I.D. There are many international consulting firms which specialize in this work or there may well be a local capability. Furthermore, the TA from the California Center can assist the MOJ to develop more detailed scopes of work.

7. **Establish a thorough evaluation process.**

The Mozambicans are not used to or acquainted with a complete and thorough evaluative techniques. They are not familiar with measuring impact or careful statistical analyses to evaluate their programs. For example the Attorney General's office attempted to institute a statistics office and we were told it did not work and they abandoned it.

A.I.D. could consider funding TA for the development of an evaluation plan to begin follow up and evaluate USAID supported justice activities.

8. **Start a follow-up system.**

In our round table discussions with District level judges we found that those judges outside Maputo felt completely abandoned when they returned home to the provinces and/or districts. Other than a very occasional formal inspection there appears to be little or no planned follow up activities. A worthwhile activity for AID support could be the establishment of a planned follow-up system. Possibly a newsletter and/or a distribution system of new codes, legislation, and decisions by higher tribunals could be sponsored. The follow-up system could be integrated into the general work and programs of CEJ.

C. **Suggested Prioritized Target Groups for A.I.D.** (does not coincide with GRM priorities for in-country training).

There has been a reluctance on the part of counterparts to set priorities for a variety of reasons. Some are:

- . Historical - at one time the organizations involved came under the MOJ before the new Constitutions and subsequent Codes. Some of the interorganizational rivalries still persist.
- . Fair play - the justice sector organizers want to show fairness and impartiality to all justice groups.

- . It does not appear that a prioritized proposal with a limited size was requested from the WG.
- . The rationale behind proposed budget estimates is not clear.

The following ideas about priorities and target groups have been presented to GRM staff. They will be reviewed by USAID and then discussed. The contractor proposes the set of priority target groups with #1 having highest rank and #4 the lowest. The contractor has identified those levels of the justice sector that are the most visible and responsible for the delivery of justice services to the public. Furthermore, preference has been given to levels where we know the persons assigned have insufficient preparation and experience. The Mozambicans have not approved these priority rankings:

1. **District Tribunal Level**
 - a. New Public Ministry clerks and other administrative support staff (Planned for 1993 & 1994).
 - b. Administrative support staff (not mentioned so far in documents reviewed).
 - c. Current judges and Public Ministry magistrates.
 - d. New judges (after provincial-level judges have been assigned and trained, and existing district-level judges have been retrained).
 - e. New Public Ministry magistrates.
2. **Provincial Tribunal Level**
 - a. New Public Ministry clerks and other administrative support staff (Planned for 1993 & 1994).
 - b. Administrative support staff (not mentioned so far in documents reviewed).
 - c. Current judges and Public Ministry magistrates.
 - d. New judges.
 - e. New Public Ministry magistrates.
3. ***Registros and Notariados Personnel (high Mozambican priority).***

4. *Tribunal Administrativo* (not currently functioning)

D. Programs in Process and Proposed by Other Donors

The contractor has spent considerable time reviewing other donor programs and also made two visits to the U.S. Embassy sponsored district level judges training program in Matola. Visits included 4 hours of observation of classroom instruction and a round-table discussion with three students from the northern, central, and southern parts of the country. Other donor programs reviewed include:

1. U.S. Embassy sponsored district level tribunal training courses.
2. DANIDA
3. World Bank.
4. Others.

E. Discussion of Relationships

This report covers the relationships of training to legislative reform, institutional strengthening and efforts to improve the law faculty.

1. Legislative Reform

The Checchi consultant who worked on legislative reform has completed the investigations, interviews, and analyses of the laws, codes, etc. That contractor's Final Report addresses the issues of training needs in this expanding area of legal reform.

2. Institutional Strengthening

Some of the areas of institutional strengthening will be addressed particularly in Chapter IV which deals with suggested twinning arrangements.

3. Efforts to Improve the Law Faculty

The World Bank is proposing considerable efforts to improve the law faculty. The contractor is not proposing further support to the Law faculty by USAID/Maputo because of the current DANIDA and proposed WB inputs.

F. Preliminary Estimates of Inputs

The contractor recommends modest amounts of A.I.D. technical assistance and participant training. Brief discussions of these needs are given above. In summary they are:

1. **Technical Assistance Needed**

- a. USAID funded 2 to 3 months California Judicial Center TA
- b. 2 to 3 months funded CEJ TA (funding source to be decided)
- c. 12 months of U.S. funded TA to train trainers

2. **Overseas Participant Training Needed**

CEJ staff members at California Center and Portuguese CEJ - about 3-4 months each.

Chapter III

THE JUDICIAL EDUCATION CENTER (CEJ)

The concept of the establishment of a Judicial Education Center (CEJ) many times has been rejected immediately because those reviewing the idea visualize it as another "bricks and mortar" scheme to construct a facility. The CEJ which is described in this Chapter outlines a manner in which a system is created to deliver needed training in a cost effective and efficient manner. Additionally such training will be planned and provided on the basis of carefully conducted regular and periodic needs assessments. The contractor has participated in the evaluation of many administration of justice training programs where hundreds of individuals received thousands of hours of instruction (usually costly) in unplanned programs, all of which had little or no lasting impacts. Many of these courses proved to be of low quality, thus wasting irreplaceable resources which could have been used for other productive endeavors.

In view of the continuously growing demand for training that will be greatly enhanced when judicial training for the profession is established in the Judicial Branch, it will be necessary to strengthen and systematize at the institutional level the present training process. This requires starting from the principle that training for judicial personnel must be a permanent, conscientious and stimulative process at the individual or group level; based on the constant need for knowledge, abilities, skills and attitudes to be increased, enhanced and improved on the same job to maximize the quality and quantity of services delivered. From an institutional point of view this means to guarantee and promote access to educational opportunities. For these reasons the contractor proposes the establishment of CEJ.

This process includes not only scientific and technological improvements in each professional, technical and administrative area but also the need to establish a working group relationship as the fundamental basis for joint efforts and resources in the services provided to the population. This should guide the activities to be carried out by the CEJ under the technical and financial assistance of agencies and organizations which have or will participate to enhance the ability of the Mozambican justice system.

It is worth mentioning that the design is not by itself a goal, but a means of achieving four important areas to be developed:

- **Strengthening of the CEJ as the coordinating and implementing unit for training activities;**
- **Implementation of training activities in accordance with the general requirements identified by the formal and informal diagnosis;**
- **Training in very specialized areas and the development of multiplying factors;**

- **Related training as a result of the implementation of various programs and projects.**

The design of a system to develop training actions as the methodological basis for operating the CEJ will include the following areas within a political, conceptual and structural frame of reference:

- **Academic Planning**
- **Academic Production**
- **Organization and Development of the Teaching-Learning Process**
- **Evaluation and follow-up (Actual on the job application)**

The proposed design is sufficiently flexible to adapt to planned or unexpected political and technical requirements, and to be implemented in stages at the short, medium and long-term according to national and institutional characteristics and conditions, and with the type of support that agencies and organizations will actually provide. The design of this proposal and its implementation are subject to further adjustments based on experience and feed-back.

The terms of reference for the technical assistance to organize the CEJ will specify that the experts will work cooperatively with their GRM counterparts to design the mechanisms to carry out the various CEJ functions. This is a process which will evolve over the next year or two. The contractor would like to recommend further analytical work in the training area as the CEJ is conceptualized and begins to develop. The Terms of Reference for Technical Assistance in Annex 3 refer to such analyses.

The contractor has suggested that USAID/Maputo consider assisting the MOJ establish the CEJ. USAID inputs could be limited to participant training for key CEJ staff, TA to train trainers, and TA to develop the Center itself. The TA source suggested was the State of California Center for Judicial Education and Research. The specific objective of this chapter is to formally record the conceptualization of CEJ as presented to the MOJ staff and the Mission. The eight sections below describe how the CEJ would function:

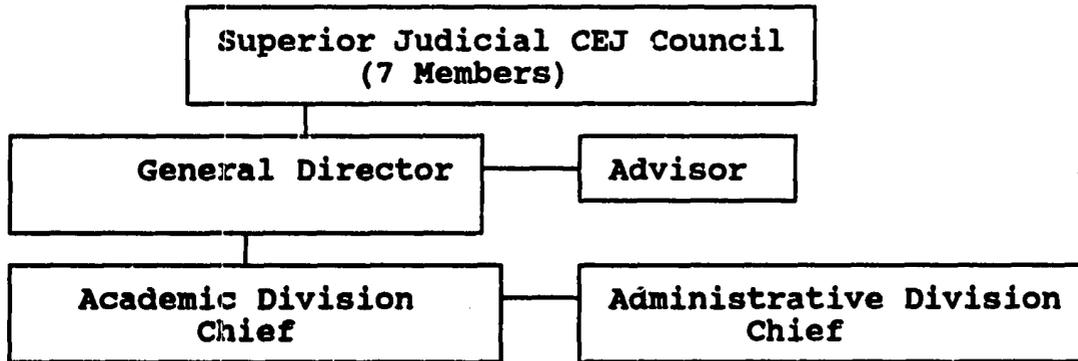
- **The Judicial Education Center (CEJ) - a description**
- **The scope of CEJ activities**
- **Coordination of CEJ activities including completion of needs analyses and multi-year training plans**
- **Training of instructors**

- . Participant training
- . In-country training for the sector's personnel
- . Development and production of instructional materials
- . Institutionalization of a training capability

A. The Judicial Education Center (CEJ) - A Description

The purpose of the CEJ will be to coordinate the provision of training for the entire justice sector including the personnel of the courts and the representatives of the Public Ministry. The Sector Survey section of this consultancy gives a breakdown by judicial district of the magistrates, judges and support personnel of the system.

The organizational chart below suggests the possible organization of the center.



The MOJ will probably adapt this suggested organization to meet the requirements of Mozambique. The consultant suggests that the details be worked out with the California Center's and CEJ of Portugal's TA inputs. A less formal arrangement might make more sense for the CEJ. Nevertheless, it is important that the communication channels be open at all times.

The Superior Judicial School Council could be made up of seven voting members and one non-voting member. They could be:

- the Minister of Justice, President;
- a member of the Council of Ministers;

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- a member of the *Tribunal Supremo*;
- the Attorney General;
- a member of the *Tribunal Administrativo*;
- the National University's Law Faculty Dean;
- the Director of the Judicial School who serves as Secretary of the Board and is a non-voting member;

The Council:

- formulates general policies;
- approves plans and programs;
- controls, verifies and monitors the plans and programs;
- approves national and international agreements with the Center;
- approves any necessary regulations;
- proposes the Center's annual budget, which would be a separate line item in the national budget; and
- proposes any changes in Center personnel assignments or staffing patterns.

The CEJ should have two operating divisions -- academic and administrative. They are not subdivided, but they are made up of functions which work in the following areas. The Academic Division's areas are: investigations, programming, training courses, publications and evaluations. The administration division's areas are: personnel, budget, management, procurement and investment, travel and per diem, institutional development, systematization of information, libraries and documents, public relations and communications.

B. The Scope of CEJ Activities

The training program should be designed to strengthen the institutional capacity and program of the CEJ, along with providing support to other training activities not sponsored by CEJ. Activities should support the CEJ in the following:

- . Coordination of training activities in the sector;

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- . Development of curricula;
- . Development of instructors;
- . Participant training for key institutional and instructional staff;
- . Delivery of specific types of training -- mainly consisting of non-traditional courses for criminal investigation, prosecutors in an accusatory system, other new training requirements resulting from reform laws, and training in subject areas where there is a lack of local capability;
- . The development and production of instructional materials particularly those for new curricula areas; and
- . The development and institutionalization of evaluation and follow up programs.

During 1993 and 1994 the majority of courses are planned to be short term refresher courses from 3 to 5 months. For 1995, 1996, and 1997 the MOJ plans to institute more long term formation (basic) courses of two to three years. Both types can be given through:

- direct agreements with local and foreign instructors;
- contracts with universities and other entities to give courses developed by the CEJ; and
- contracts with other entities without the Judicial School's participating in developing the instructional program.

The courses should involve full attendance in the classroom with self-instruction and tutorial services being provided. The latter issue is only at the discussion stage.

The CEJ will provide what educators would term in-service training. Formal pre-service training is accomplished by the law faculty. Nevertheless, since there are so many judges, prosecutors and professional staff without any legal training, the CEJ will be called upon to teach pre-service type courses for these persons assigned as professionals.

The sector generally has interpreted its responsibility to be teaching legal doctrine and procedures rather than technical and administrative matters. The contractor does not disagree with this priority establishment since so many of the individuals performing as judges or prosecutors have very little or no formal training in the codes or procedural matters. Current and recent reform priorities have been civil and criminal codes and procedures with attention to applicable family sections of the codes. However, with the advent of an ongoing training needs identification capability and use, these priorities will be

changing continually. For example, as new laws are promulgated for the family and commercial areas, there will be the need to incorporate the new codes into training programs. Additionally, it will be necessary for the responsible sectors to sponsor seminars or special introductory courses to introduce the new laws. The sector usually has not trained judges in investigative techniques or principles. The last two areas need the Mozambican legal sector's attention.

Some of the possible areas for prioritization for the future CEJ could choose the following areas for priority in instruction:

- administrative process as it relates to the judicial function;
- ethics and how to be a judge;
- personnel management;
- updating knowledge of criminal, civil and labor law;
- civil law;
- civil procedures;
- criminal law;
- criminal code procedures;
- family law;
- commercial law;
- justice reform;
- customs legislation;
- criminology; and
- fundamentals of information and computer operations.

Chapter II suggests that courses can be arranged for about 40-50 instructors. CEJ could arrange for the preparation and publication of teaching materials and periodicals. However, there will be a further need to upgrade the level of the instructional personnel. CEJ should plan to develop and strengthen its teaching staff in three major areas:

- legal studies -- penal, civil, customs, commercial, possibly labor and procedures;
- non-legal studies related to justice -- criminology, psychology, sociology, economics and forensic techniques and medicine; and
- complementary disciplines -- skills which can be taught to improve the administration of the system such as personnel management, office management, information systems and public relations.

C. Coordination of Training Activities Including Completion of Needs Analysis and Multi-year Training Plans

During the Consultant's review, a lack of coordination and cooperation was found in the efforts of the various training activities of the justice sector. The establishment of CEJ, or a coordinated system to deliver training, will fill this gap. As noted in Chapter I, the Working Group has identified large groups of people to be trained but a capability to implement and carry out an on-going training needs assessment still has not been addressed by the GRM. The CEJ should be the focal point of such activities.

D. Training of Instructors

There will be a need to supply resources to train a pool of about 50 instructors for pre-service training, in-service training and hopefully in some type of distance education program. Most of the instructors can come from the roles of current staff from the courts and Public Ministry, the law faculty, practicing lawyers, and some contract expatriate professionals.

E. Participant Training

The contractor is suggesting very limited USAID participant training and only for key CEJ staff. The sector can not afford to have large numbers of its qualified personnel studying abroad.

F. In-Country Training for the Sector's Personnel

The following tables illustrate the GRM's planned and proposed 1993-1997 in-country training program: Funds have been requested from the World Bank and other donors. For better clarity the contractor has organized the plan by institutions, level of employees, and length of training. There is more than enough planned to keep the small CEJ staff busy continually. Summary tables are presented first and then the institutional programs follow:

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PLANNED TRAINING COSTS
BY YEAR AND BY ORGANIZATION

(\$000)

YEAR

Organization	1993		1994		1995		1996		1997		Totals	
	P/a	Cost	P/a	Cost	P/a	Cost	P/a	Cost	P/a	Cost	P/a	Cost
DRS: (1)	70	\$57	49	\$35	141	\$177	322	\$231	396	\$120	1,527	\$620
FOR (2)	475	\$329.5	375	\$124	375	\$124	375	\$124	375	\$124	2,075	\$1,049
Courts	280	\$249.75	280	\$292.5	390	\$139	390	\$139	390	\$139	1,750	\$759
INAJ (3)	50	\$43.75	50	\$52.5	360	\$109	360	\$109	360	\$109	1,480	\$423
TOTALS	995	\$679	853	\$727	1,266	\$549	1,647	\$603	1,521	\$492	6,512	\$3,051

Key

P/a person months

(1) National Directorate of Registries and Notaries

(2) Attorney General

(3) National Institute for Justice Assistance

SUMMARY WORLD BANK TRAINING TABLE

BY ORGANIZATION

Organization	# Activities	# Trainees	Person Months	(\$000) Cost
National Directorate of Registries and Notaries	5	124	735	620
Public Ministry Attorney General	14	155	2,075	1,048.5
Courts	12	180	1,730	959.25
National Institute for Justice Assistance	7	50	1,180	423.25
TOTALS	40	531	6,512	\$3,050

Table shows \$3,043

(7 round off error)

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TS (COURTS)

Year	Target	#	Months	Person months	Cost
2/93-6/93	TS Current Dist. Judges (Refresher)	25	5	125	\$113.75
8/93-12/93	TS Current Dist. Judges (Refresher)	25	5	125	105
1993	TS Spec. Train. (new Lic.)	<u>10</u>	<u>3</u>	<u>30</u>	<u>30</u>
		60		280	\$248.75
2/94-6/94	TS Current Dist. Judges (Refresher)	25	5	125	136.25
8/94-12/95	TS Current Dist. Judges (Refresher)	25	5	125	126.25
1994	TS Spec. Train. (new Lic.)	<u>10</u>	<u>3</u>	<u>30</u>	<u>30</u>
		60		280	292.5
1993	TS Medium Training	10	36	360	109.0
1993	TS Spec. Train. (new Lic.)	<u>10</u>	<u>3</u>	<u>30</u>	<u>30.0</u>
		20		390	139.0
1996	Medium Training	10	36	360	109.0
1996	Spec. Train. (new Lic.)	<u>10</u>	<u>3</u>	<u>30</u>	<u>30.0</u>
		20		390	139.0
1997	TS Medium Training	10	36	360	109.0
1997	TS Spec. Train. (new Lic.)	<u>10</u>	<u>3</u>	<u>30</u>	<u>30.0</u>
		<u>20</u>		<u>390</u>	<u>\$139.0</u>
12 activities		180		1,730	\$958.25

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FGR (PUBLIC MINISTRY)
ACTUAL PLAN UNDER WB (\$000)

Year	Target	#	Months	Person months	Cost
1993	FGR Admin. Staff (Basic)	30	12	360	\$227
2/93-6/93	FGR Current Proc. (Refresh)	10	5	50	45.5
8/93-12/93	FGR Current Proc. (Refresh)	10	5	50	42
1993	FGR Specific Training (new graduates)	<u>5</u>	<u>3</u>	<u>15</u>	<u>15</u>
		55	25	475	\$329.5
1994					
1994	FGR Admin. Staff (Basic)	30	12	360	\$227
2/94-6/94	FGR Current Proc. (Refresh)	10	5	50	54.5
7/94-12/94	FGR Current Proc. (Refresh)	10	5	50	50.5
1994	FGR Specific Training (new graduates)	<u>5</u>	<u>3</u>	<u>15</u>	<u>15</u>
		55	25	475	\$347
1995 (CEJ FUNCTIONING)					
1995	FGR Current Proc. (Medium)	10	36	360	\$109
1995	FGR Spec. Train. (new grads.)	<u>5</u>	<u>3</u>	<u>15</u>	<u>15</u>
		15	39	375	\$124
1996 (CEJ)					
1996	FGR Current Proc. (Refresher)	10	36	360	\$109
1996	FGR Spec. Train. (new grads)	<u>5</u>	<u>3</u>	<u>15</u>	<u>15</u>
		15	39	375	\$124
1997 (CEJ)					
1997	FGR Current Proc. (Refresher)	10	36	360	\$109
1997	FGR Spec. Train. (new grads.)	<u>5</u>	<u>3</u>	<u>15</u>	<u>15</u>
		15	39	375	\$124
		====	====	=====	=====
14 activities	24	115		2,075	\$1,048.5

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TRAINING PLAN 1993 - 1997

DNRN (NATIONAL DIRECTORATE OF REGISTRIES AND NOTARIES)

(\$000 US)

Year	Course type - Target	Number Trainees †	Months	Person months	WB Cost	DNRN
1993	Refresher - Assistants †††	30	3	90	<u>57</u>	<u>37</u>
				Subtotal	57	37
1994	Refresher - Assistants	16	3	48	<u>35</u>	<u>20</u>
				Subtotal	35	20
1995	Refresher - Assistants	25	3	75	57	32
	CEJ - Medium term - - Cons. and Notaries	11 ††	36	396	<u>120</u>	<u>60</u>
				Subtotal	177	92
1996	Refresher - Assistants	42	3	126	111	64
	CEJ - Medium term (start 1995)	-	-	-	<u>120</u>	<u>60</u>
				Subtotal	231	124
1997	CEJ - Medium term (start 1995)	-	-	-	<u>120</u>	<u>60</u>
				Subtotal	<u>120</u>	<u>60</u>
	TOTALS	124		735	\$620	\$332

- † All trainees are full time and must leave position.
- †† 10 conservadoras and 1 notary funded for each of 3 years.
- ††† ajudantes - assistants

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Notes on DNRN Training Plan

- #1 DNRN budgeted 1.0 million local currency per month per person (about \$420 US per person)

- #2 DNRN planned to subsidize instructors at local currency 3,000 per hour (about US\$1.15 an hour)

- #3 Major subject areas include:
 - A. Civil Registers
 - . Buildings
 - . Commercial
 - . Automobile

 - B. Notaries
 - . Civil law
 - . Commercial law
 - . Fiscal law
 - . Administrative law

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G. Development and Production of Instructional Materials

In addition to the support for the development of curricula and instructional materials under B above, there will be the cost of some equipment to establish a limited capacity to print distance education materials and about six months of local technical assistance to help set up a reproduction. The CEJ should print sufficient copies of pamphlet-type materials for regular and distance education training modules. CEJ could assist materials production efforts in new curricula areas such as prosecution and investigation techniques.

H. Institutionalization of a Training Capability

Training for the personnel of the judicial system is very limited and not of good quality. There is no institutionalized capacity within the judicial system to provide the training which is needed. All analyses of operation of the judicial system indicate that the lack of training for its personnel is a major impediment to its better performance. The magistrates of the Supreme Court and the Attorney General agree that a large training effort is required, and that it would be advisable to establish a common institution, i.e., a Judicial Education Center to provide that training. Implementation of other components will require a substantial training program to be carried out in their support. This component will provide that training, as well as other training needed by the judges, prosecutors, persons responsible for public defense and the administrative personnel of the judicial system. It will also assist in creating an institutional capacity for the judicial system to continue to provide the training needed by its personnel in the future.

1. Persons to be Trained

The World Bank funded Project will begin by supporting training in Mozambique as well as third country training which meets the immediate and obvious needs of the personnel of the judicial system and which provides support to the components of the project. Selected members of the judicial system will be sent for the training so that they will be available to work on the project by the end of its second year. The tentative plan for this component assumes that some form of training will be necessary for members of the judicial system; and that the institution to be created (CEJ) will resemble those that exist in other civil law countries, and will serve both the Judiciary and the Public Ministry as well as the public defenders.

The CEJ will operate under the guidance of the Judicial Council. It will have a permanent staff of three persons. These positions should be financed by the budget of the Judiciary and the Public Ministry. The majority of the instructors will be selected from existing judges and prosecutors: They will receive training in teaching methods.

2. **Composition and Costs of In-country Training Programs**

The planned in-country training costs are summarized below by Project year:

**IN-COUNTRY TRAINING COSTS BY PROJECT YEAR
(\$000)**

<u>Year</u>	<u>Events</u>	<u>Students</u>	<u>\$ Cost</u>
1993	5	155	679
1994	5	141	772
1995	4	81	549
1996	4	87	550
1997	<u>3</u>	<u>45</u>	<u>493</u>
TOTALS	21	509	\$3,043

There will be 509 justice sector personnel trained in 21 events at a cost of \$ 3.043 million dollars.

3. **Expected Outputs**

The outputs to be produced by this component are expected to be:

- yearly training plans setting out the number and types of courses to be sponsored;
- standards for the selection of persons to participate in the courses;
training methodologies for each type of training event;
- curricula and instructional materials for the courses;
30 training events for 560 plus trainees including training of trainers;
- an evaluation of the utility and impact of each type of training event;
- final plans, including specifications for the preparation of physical plant; and

- final plans for equipped facilities for the CEJ.
4. Estimates of Assistance from A.I.D. by Time and Cost

The contractor suggests that USAID/Maputo consider providing its inputs in two phases as follows:

Phase I:

During 1992 provide technical assistance from the California Center for Judicial Education and Research. October-December 1992. Cost - 3 months - approximately \$55,000.

As early as possible in 1992 arrange for key CEJ staff members to attend special on-the-job training programs at the California Center for Judicial Education and Research. November 1992-March 1993.

3 people @ 2-3 months ea. @ approx. \$5,000 per month.
Total - \$45,000-\$50,000.

Phase II:

During 1992 and 1993 provide technical assistance to train trainers, develop curricula and instructional materials. November 1992-October 1993.

12 months TA @ \$20,000 per month - approx. \$240,000.

Phase III: (Optional) - January 1993 - October 1993.

Conduct pilot courses in CEJ for 5 months.

2 courses @ \$50,000 ea. - Approx. \$100,000.

The services above could be provided by a consulting firm or one of the institutions mentioned in Chapter IV.

The estimated USAID inputs are:

BUDGET SUMMARY

**AID INPUTS
(\$000)
Amount**

Phase I (1992)

Technical Assistance	55	
Training	<u>50</u>	
		105

Phase II (1992-1993)

Technical Assistance		240
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Phase III (Optional) (1993-1994)

Training Courses		<u>100</u>
Total		45

Chapter IV

SUGGESTED UNITED STATES TRAINING ORGANIZATIONS

This chapter suggests some United States organizations to help provide technical assistance, develop U.S. university linkages and information exchange mechanisms. The following summarizes our findings by organizations, contact person, address and telephone number and provides a brief description of services they can provide:

A. **Center for Judicial Education and Research**

Paul M. Li, Director
2000 Powell Street Suite 850
Emeryville, CA 94608-1899
(510) 464-3828

CJER personnel can design and conduct tailored training programs in Mozambique, or provide training at CJER in California. The latter could be done with the aid of Portuguese interpreters.

B. **The National Judicial College**

V. Robert Payant, Dean
University of Nevada, Reno
Reno, Nevada 89557
(702) 784-6747

The College has designed and presented special programs for foreign judges, and has translators available.

C. **Howard University School of Law**

Henry Ramsey, Dean
2900 Van Ness Street, N.W.
Washington, D.C. 20008
(202) 806-8000

Howard has provided short courses and study-tours for African judges.

D. University of California, Davis

University Extension
Beth Greenwood
Davis, CA 95616
(916) 757-8569

The University Extension at Davis offers the Orientation in American Law for foreign lawyers and judicial personnel, with emphasis on administration of justice.

E. International Law Institute

Stewart Kerr, Executive Director
1615 New Hampshire Avenue, N.W.
Washington, D.C. 20009

ILI offers 4-week courses to foreign officials, lawyers, and judicial personnel in, among other things, Administration of Justice, and Orientation in the U.S. Legal System.

F. Southwestern Legal Foundation

P.O. Box 830707
Richardson, Texas 75083-0707
(214) 690-2370

The Foundation offers the Academy of American and International Law, which includes such courses as Introduction to American Legal Process.

G. African-American Institute

1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202) 667-5635

The Institute conducts seminars and study-tours for African officials, including judicial personnel. Visitors are assigned interpreters as necessary.

H. Other U.S. institutions that offer judicial training and may accommodate foreign judges in their courses and observation tours of U.S. judicial systems include:

1. **Center for the Administration of Justice Florida International University (Miami, Florida)**
2. **National College of Juvenile and Family Court Judges (Reno, Nevada)**

3. Michigan Judicial Institute (Lansing, MI)
4. Federal Judicial Center (Washington, D.C.)
5. Florida Judicial College
6. New Jersey Administrative Office of Courts

As to other institutions, the International Development Law Institute in Rome offers courses in legal skills, but has no courses specifically for judicial or administrative personnel. There are also judicial training centers in Spain and France that might be of assistance. Finally, we will need to look into training centers in Brazil and the availability of appropriate Portuguese-speaking trainers.

Checchi will pass additional information on to the Mission as it becomes available.

Chapter V

SUMMARY OF TRAINING ACTIVITIES

This final Chapter identifies ten major training activities that should take place for the program to have lasting impacts. It identifies each area and suggests some responsibilities for different organizations, as described in Chapters I to IV. The contractor suggests that A.I.D. can be the catalyst to start some of these programs but considerable support will be required from the GRM and other donors. The activity areas with suggested sponsors in parenthesis are:

1. Structure an on-going training needs identification capability which meets many changes (CEJ);
2. Train trainers (CEJ);
3. Select training materials (CEJ);
4. Develop curricula and course outlines (CEJ);
5. Propose programs for legal professionals without professional training (CEJ and Law Faculty);
6. Carry out provincial and district training for persons delivering justice services (CEJ);
7. Identify non-formal education interventions to promote public awareness of legal system (MOJ, INAJ, DANIDA, and A.I.D.);
8. Suggested needs for training materials, information, and equipment (CEJ);
9. Investigate relations between customary and civil law in developing countries (Law Faculty, A.I.D., and other donors);
10. Evaluation system for training provided (CEJ).

Eight of the ten areas presented above indicate the responsibility of the CEJ which will be called upon to implement a massive, ambitious and complex training program for large numbers of justice sector personnel. Actions 1, 2, 3, 4, 5, 6, 8 and 10 are covered either in Chapters II or III. Items 7 and 9 are elaborated below since the contractor's Scope of Work stipulated their coverage.

A. Identification of Non-formal Education Interventions to Promote Public Awareness of the Legal System.

The press offices of the sector's organizations traditionally have been oriented to recording the personal appearances of the heads of the organization and issuing routine press releases. Furthermore, journalism in Mozambique is in its infancy with limited trained professionals. In general they have not sought to present information about the programs and the problems being addressed by the justice sector. Partly as a result of that situation, the mass media in dealing with the justice sector largely limits itself to reporting violent crimes. This situation contributes to the negative view of the operation of the justice sector which is held by most people in the nation. It is important that the new and improved efforts created by all these activities be perceived by the general public as an improved operation. The contractor is suggesting that Mozambican justice sector and other donors support efforts to accomplish that by supporting the creation of a new approach to public relations in the sector's key organizations and by the publication in the mass media of serious and reliable information concerning the sector and its programs.

These are a variety of programs that the GRM can consider in order to assure that topics which are of importance to the sector reform program are adequately explained to the public. In other countries projects are in place to finance the purchase of weekly space in two or three mass circulation newspapers for use in informing the public about them. This type of activity can also provide training re the justice system and its problems to journalists from the media selected. Those journalists could be expected to prepare articles on the topics selected for discussion, as well as any which may be proposed by the journalists and approved for inclusion. There is the possibility of providing a fund to be used in research by the journalists. However, such an activity should not exercise control over the content of the articles or editorials to be printed. That will be the responsibility of the media and the journalists who are chosen to participate.

The DANIDA (Danish A.I.D.) is providing extensive assistance to Mozambican legal institutions with a budget of 17,269,000 DKK (about \$ 3.0 million U.S.). The team reviewed the information and media campaigns which DANIDA is supporting through INAJ (Justice Assistance Institute) in its efforts to carry out information and media campaigns on legal problems in everyday life, both by means of financial and technical assistance, the latter within media development and communication. DANIDA is supporting INAJ in giving radio broadcasts and preparing printed media with information on various legal problems and citizens' rights and duties as stated in the new constitution. Information to citizens on the multi-party system, election procedures, various new legislations as a result of the new constitution, etc., are anticipated. INAJ is also preparing to publish a quarterly bulletin with DANIDA's support.

Other means of information and media techniques are being identified and elaborated by INAJ in cooperation with a media/communications consultant, who has experience from printed media and radio/audio programs in developing countries.

Overall the INAJ mass media campaign seems to be progressing satisfactorily. Therefore, the consultant is not recommending USAID/Maputo involvement at the present time since many other high priority A.I.D. inputs have been identified. This may well change when the Mission assists the GRM in the electoral processes.

B. Relation between Customary and Civil Laws in Developing Countries

Since 1980 the MOJ has been investigating the relations between customary and civil laws, particularly as they relate to family law. The legal reform action plan, which is an integral part of this delivery order summarizes such investigations and recommends steps to be taken to incorporate the complex areas of traditional law. Unfortunately the security situation has been so difficult that many of the planned field studies and site visits have not been completed. Nevertheless, now it appears that the GRM desires to proceed in reforming these important areas.

Chapter VI

CONCLUSION

In conclusion, the legal education action plan of this delivery order found that the GRM has identified a large group of justice sector personnel to receive training. After extensive discussion and analyses the plan concludes an adequate system to develop, deliver, evaluate and follow up on a large training program is not currently in place. The action plan recommends that USAID/Maputo assist the MOJ establish a judicial education center (CEJ). The suggested A.I.D. resources are selected technical assistance and short term training in the U.S. and/or third countries for the new CEJ staff (3 persons) at an approximate cost of \$445,000 US. Other options and activities are presented for USAID review and consideration.

LIST OF PERSONS CONTACTED**ANNEX 1**

<u>NAME</u>	<u>TITLE</u>
Ossumane Ale Dauto	Minister of Justice
Abdul Carimo Issá	Advisor to Minister of Justice Director of INAJ
Aires Jose do Amaral	Advisor to Minister of Justice Head of Working Group
Ana Pessoa	Acting Director of Department of Investigation and Legislation
Victor Eugeni Sueia	National Director of Registers and Notaries
Mario Fumo Bartolomeu Mangaze	President Supreme Court
Madalena Maquembane	Secretary to Minister of Justice
Jose Norberto Carrilho	Vice President of Supreme Court
Joaquim Salomao Manhique	National Inspector of Registers
Floris Schmitz	Computer expert - UNDP- assigned to University computer center (CIUEM)
Maarit Kinnunen	Volunteer computer expert, Finnish Volunteer Group - Assigned to University CIUEM
Mathew Holden, Jr.	Professor Univ. of Virginia - USIS visiting Professor
Alberto Santos Nbutumula	President of Popular Maputo Tribunal
Gerald McLoughlin	Cultural Attache USIS/Maputo
William Rangle	Fulbright Professor Eduardo Mondlane University
Edward Kempt	Assistant public affairs officer USIS/Maputo
Salvador Eugenio Bazima	Vice Director INAJ
Flina Majurana Gomes	Member INAJ
Benjamin J. Tamele	Member INAJ

Sinai J. Nhatitma	Vice Attorney General
Luisa Capelao	Policy Analyst USAID
Antonio Albano Silva	Lawyer in Private Practice
Bosse Hammarstrom	Swedishe Agency for Development
Jens Haarlov	DANIDA- Danish Embassy
Alirio de Oliveira Ramos	First Secretary, Embassy of Brazil
Pirkko-Liisa Kyostila	Second Secretary, (Development Cooperation) Embassy of Finland
Angelina V. Ernesto Homo	Dept. of Finances and Administration, Ministry of Justice
Vasco Branco Guimaraes	University Professor and World Bank Consultant
Antonio Jose Rosado de Sousa	Cooperation Consul, Embassy of Portugal
Jacomina de Regt	Senior Program Officer, World Bank
Antonio Salvador Siteo	Notary, Maputo
Jose M. Muaves	Director, Registers and Notaries, Maputo
Lidia Juliao B. Miandica	Conservator of Registers for Buildings and Businesses
Charles North	Deputy Program Officer, USAID/Maputo
Julius Schlotthauer	USAID/Maputo Director
John Muller	USAID/Maputo Deputy Director
Justice Fortes	Supreme Court Justice
Chris Dell	Deputy Chief of Mission US Embassy, Maputo
Erasmus Nhavoto	Advisor to Attorney General

Graciela Xavier	Office of Administration, Attorney General's office
Henrique Carlos Machele	Member INAJ
Acucena Xavier Duarte	Magistrate Public Ministry
Alfen Maubique	Community Tribunal Judge
Dommingo Malauhifico	" "
Epitacio Xavier	" "
Maria Alberto	Clerk of Community Tribunal
Antonio Matsolo	Judge, 1st district Tribunal, Maputo
Rafael Sabastao	Clerk, 1st District Tribunal, Maputo
Luis Felipe Sacramento	Supreme Court Justice
Nina Berg	NORAD, Norweigan Embassy
Teodosio Vate	Vice Dean, Faculty of Law
Lucal Verbay Mvula	Student, Training course
Cristovao Aleifo	" "
Sebastiao Ribeiro Manhuia	" "
Kim Cuenco	Urban Planner, World Bank
Gregory Myers	Land Tenure Center
Harry West	Lane Tenure Center
J. Michael Turner	USAID/Maputo DI Contractor
Roberto Chavey	Country officer, World Bank
Teresa Genta Fons	Legal Advisor, World Bank
Deborah Mendelsohn	Country Desk Officer for Mozambique AID/W. Africa Bureau

CAPACITY BUILDING PROJECT
 MOZAMBIQUE
 LEGAL COMPONENT - PPF/FINANCED SEMINAR
 INTERNATIONAL SEMINAR ON JURIDICAL TRAINING
 MAPUTO, 2.17.92
 PROGRAM

17.02.92

- 9.00 H - Opening ceremony
 9.30 H - Break
 10.00 H - Presentation of the Paper:
 "The role of the P.G.R. in the Implementation of
 the Rule of Law State"
 - Moderators: José Norberto Carrilho
 Afonso Armindo Fortes
 11.30 H - Synthesis
 12.00 H - Break
 14.30 H - Presentation of the Namibian Delegation's Paper.
 15.00 H - Presentation of the Paper:
 "The Urgent Need to train Judges for the
 Judicial Courts"
 - Moderators: Sinai Jossefa Nhatitima
 Abdul Carimo
 17.00 H - Synthesis
 17.30 H - Interruption

18.02.92

- 8.30 H - Presentation of the Angolan Delegation's Paper.
 9.00 H - Presentation of the Paper:
 "Tasks and importance of the Administrative
 Court in Mozambique".
 - Moderators: Laura Rodrigues
 Teodósio Uate
 11.00 H - Break
 11.30 H - Synthesis
 12.00 H - Break
 14.30 H - Presentation of the Zimbabwean Delegation's
 Paper.
 15.00 H - Presentation of the Paper:
 "Law Practice in Mozambique: The past, the
 present and the future".
 17.00 H - Synthesis

19.02.92

- 8.30 H - Presentation of the Paper:
 "Ministry of Justice: Present tasks,
 perspectives".
 - Moderators: Luís F. Sacramento
 João Luís Vitorino
 10.00 H - Break
 10.30 H - Synthesis

- 10.45 H - Presentation of the Paper:
 "The role of Juridical Training in the
 development of the Police Forces".
 - Moderators: Afonso Antunes
 Salvador Bazima
- 12.00 H - Synthesis
- 14.30 H - Presentation of the U.S.A. Delegation's Paper.
- 15.00 H - Presentation of the Paper:
 "Juridical Training in Mozambique: Past,
 Present and Future".
 - Moderators: Aires do Amaral
 Açucena Xavier Duarte
- 17.00 H - Synthesis

20.02.92

- 8.30 H - Presentation of the Paper:
 "The Role of the Jurist in Portuguese Society".
- 9.00 H - Presentation of the Paper:
 "The Role of Law in the Economic Development of
 a Society".
 Moderators: João Manuel Martins
 Maria da Luz Veloso
- 11.00 H - Break
- 12.00 H - Synthesis
- 14.30 H - Presentation of the South African Delegation's
 Paper.
- 15.00 H - Presentation of the Paper:
 "The Role of the Jurist's Training in His
 Intervention in a Changing Society: The Case
 of Mozambique".
 - Moderators: Ministers of Justice
 Magnificent Rector
- 17.00 H - Interruption

21.02.92

- 8.30 H - Continuation of the discussion on the previous
 theme (The Mozambican case).
- 10.30 H - Break
- 11.00 H - Resumption of the discussion
- 12.00 H - Break
- 14.30 H - Synthesis of the previous theme
- 15.30 H - Intervention by Dr. Andres Rigo - legal Director
 of the World Bank - African Division
- 16.30 H - Break
- 17.00 H - Distribution of Certificates
- 17.30 H - Closing speech, made by the Magnificent
 Rector.
- 19.30 H - Reception at the Costa do Sol Club.

INTERNATIONAL SEMINAR ON JURIDICAL
TRAINING IN MOZAMBIQUE
(Informal Translation)

THEME: "The role of the Jurist's Training in his intervention
in a changing society: The case of Mozambique".

I - Identification of the institutions benefiting from the
World Bank Program - Capacity Building - Legal
Component.

II - The detected needs.

III - Means of achieving the needs and deadlines:

. Human needs

. Material needs

IV - Concrete programs and predictable costs.

V - Interaction with the bilateral donations.

I - The needs that are often enumerated in national and
foreign reports by trained jurists imply, on the other hand, a
careful definition of the institutions benefiting from funds,
so as to guarantee that the output is duly maximized and
corresponds to an effective embryo of a continuous and
consistent juridical training, so as to by-pass the structural
scarcities which the country is facing. To make our thoughts
more precise: it is intended to make the money invested in
the various training programs, mentioned below, produce
results compatible with the needs, from a point of view of
rationality of the means employed. During the preparatory

work which was done by the Coordinating Working Group, and from the various contributions of this Seminar, there seems to result the need to indicate the following as eligible institutions:

- . Faculty of Law of Eduardo Mondlane University
- . Ministry of Justice
- . Supreme Court
- . Procuradoria-Geral da República (Attorney General)
- . Administrative Court
- . National Institute of Juridical Assistance - Bar Association
- . State and Law School - M.A.E.
- . Training School for Criminal Investigation Police (P.I.C.) agents and inspectors (to be created) - Ministry of Interior.

The choice of these institutions (those that already exist and those that are to be created) obeys the criteria of the knowledge of the existing leaders in them, as well as the challenges and needs brought about by the designation of Mozambique as a rule of law state.

II - A current need of 812 jurists is the result of the universe of the various institutions and of a provision for the private sector (law practice and juridical aid to firms):

Supreme Court and	
courts system	120
<u>Procuradoria-Geral da República</u> and	
subordinated organs	140
Administrative Court	12

Law Practice	150
State Administration and public service under tutelage	110
P.I.C.	150

Besides these institutions, jurists would be necessary in all the other state departments, such as finance, trade, the banks, transport, health, education, etc. It should not be thought that the lawyers in the estimate can fully comply with these needs.

III - According to Dr. Machatine's study, and in the light of the current limitations of the Faculty of Law, it will take at least 25 years to achieve this number of licenciados; in other words, the needs for 1991/92 would only be met and complied with in the year 2016. At the present rate of training, it is the consensus of the institutions that the ideal is to have cadres with a university education; but if it is impossible to achieve such a goal, then it will be necessary to reflect on the higher levels to be given at the Faculty of Law on the one hand, and at the same time to carry out medium level training actions, on the other.

Therefore it is obvious that it will be necessary to create the conditions for an accelerated training that will respect the quality standards that can be demanded in a society of competition which is ruled by the principle of legality.

In the light of the findings, it is important to create conditions to:

- a) increase the enrollments in the Faculty of Law and improve the students' achievement level.
- b) create medium courses in Law that may comply with the immediate needs in the short run;
- c) give technical-practical training courses with the same purpose as that outlined in b);
- d) guarantee the juridical component of the Public Administration School/State and Law School;
- e) guarantee the juridical component in a school for P.I.C. agents and inspectors which may possibly be created;
- f) make sure that specialization courses will be given to the members of INAJ (Bar Association) on subjects such as:
 - Insurance
 - International contracts
 - The banks
 - Collective negotiations
 - International negotiations
- g) guarantee the specialization component or post-graduate training for access to the Bar Association.

The joint effort of the institutions whose planning is now intended should achieve, as an immediate result, a shortening of the time necessary to comply with the Mozambican society's effective needs for jurists. For a better and more profound understanding of the methodology suggested, let us analyse each one of the components.

A - Regarding The Faculty of Law

To achieve the above-mentioned goals, it is important to guarantee the stabilization of the Faculty of Law, by the following means:

- Stabilization of the Mozambican lecturing staff and improvement of their qualifications;
- reinforcing the Mozambican lecturing staff with foreign lecturers, to be recruited mainly through an institutional inter-faculties cooperation aimed not only at their participation in direct lecturing but also at a continuous training of Mozambican lecturers on the job;
- without losing on the quality and requirements, guaranteeing a better achievement level of the students by reducing the repetition and quitting fees;
- guaranteeing a strengthening of the bibliographical core of the Faculty and contributing to an incentive for reading and the taste for acquiring books, promoting the acquisition of these at accessible prices;
- strengthening the indispensable material means for a consequent development of the teaching-learning process (class-rooms, desks, audio-visual equipment, computers, reproduction capability mimeo, photocopy machines, distribution systems, etc.).

The lines of action to develop in the short run will be:

- The establishment of a development program for the Mozambican lecturing staff, namely by means of post-graduate training courses;
- carrying out a study aimed at institutionalizing distance teaching and the reinforcement and consolidation of the volunteer system;
- carrying out a study aimed at the creation of a center for research and for rendering services;
- carrying out a study for the re-structuring of the current curriculum of the course in Law;
- hiring six lecturers, three being Mozambicans and the remaining being foreigners;
- carrying out a study for elaborating a plan of updating courses for lecturers and other jurists in the subjects that are most relevant in the process of economic changes in the country;
- carrying out a study whose purpose will be to frame the necessary stimuli for the effective making and publication of manuals by the teachers;
- carrying out a study aimed at defining the viability of granting scholarships for students in the Faculty of Law who show a high potential for research or the lecturing activity, as a means of stimulating and linking them to the institution;
- carrying out formation and training actions for the staff of the technical-administrative body;

- carrying out a study for the computerization of the pedagogical-administrative activities of the Faculty of Law;
- carrying out a study for a possible implementation of the "U.E.M. Law Faculty Bulletin", a magazine on juridical studies.

In the medium run, the purposes to achieve would be:

- the stabilization of the lecturing staff of the Faculty of Law by hiring another five lecturers, thus totalling nineteen, which is considered the minimum necessary for the purpose;
- increasing the number of enrollments and improving the quality of the graduates;
- an effective gradual implementation of distance teaching;
- institutionalization and normal operation of the center for research and the rendering of services.

A Study-Project for the creation of the Law Faculty reprography Center, endowed with modern material means to guarantee:

- The reproduction of study material;
- the editing and implementation of the Law Faculty Bulletin;
- the editing of material on the history and tradition of the Faculty of Law;
- the procuring of incomes for the Faculty of Law, in order to pay the necessary expenses, namely those of the library;

- a general improvement of the academic and technical-administrative management of the Faculty of Law, with the aid of computers;
- the implementation of a program for the regular acquisition and sale of books;

B - Regarding the Institutions Linked to Justice Administration Areas

This part of the exposition covers the following institutions:

- The Ministry of Justice;
- The Supreme Court and the judicial courts' system;
- The Procuradoria-Geral da República and the organs that are its subordinates;
- The Administrative Court.

At the moment these institutions need a total of 383 jurists. In view of the current situation, which has been analysed before, of the training capacity of Eduardo Mondlane University, it is indispensable to institutionalize a center for judicial studies, in coordination with the effort to create conditions at such a level. During a first stage, this center would guarantee short-term (2+1 years) technical-professional training courses and supply the necessary infrastructure for giving specialization courses - 3 weeks, 3-5 months, with high unit credits, so as to achieve the number of necessary juridical technicians to comply with the current needs and with those that will arise in the meantime within a period that has been established for five years.

As a means to reach these goals, the following is proposed:

In the Short Run

- To carry out a study to define:
 - the institutionalization of a medium level course;
 - a profile of the candidates and the requirements for access;
 - a curriculum of the course (subjects and schedules);
 - didactic and support teaching material;
 - type of premises and place suggested.
- To create and implement short duration (1 year) courses, aimed at complying with the urgent needs of the institutions.
- To give periodical training courses of a short duration (6 months) for judicial and Public Ministry magistrates.
- To give juridical-professional training courses and a periodical capacitation of a short duration (3 to 6 months) for justice officers (administrative support staff).
- To carry out formation and training actions for the staff of the technical-administrative corps.
- To carry out study trips, attend conferences, seminars and improvement courses abroad, in order to achieve the goals outlined above.
- A study of the viability and ways to computerize the sector.

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- Reinforcing scholarships.
- Reinforcing a library book fund.
- A study for issuing legislation to complement the Organic Law of the Administrative Court.
- Carrying out seminars on themes that are important for the training of opinion on the tasks to carry out in the medium and term objectives.

In the Medium Term

- Institutionalizing the center of judicial studies.
- Giving training courses for the exercise of the magistrate activity.
- Carrying out specific training courses on precise themes, namely:
 - international contracts;
 - financing contracts;
 - specific areas in law, to be named;
- Institutionalizing post-graduate courses.
- Carrying out studies aimed at finding out the efficiency, acceptance and understanding of the juridical and judiciary system in force.
- Computerizing the sector.

The enunciation of these actions in the short and medium terms is based on the supposition that, during the first stage, the judicial studies center will give technical-professional training and, during the second stage (5 years) it will give specific capacitation training to licenciado jurists, so that they can start working in the magistrate

career. In other words, the judicial studies center will first be a technical-professional institution, and later it will become a specialized professional higher teaching institution.

But it would also have the duty to carry out actions for the periodical and permanent training of judges, procuradores and other jurists.

Anyone who attends or passes the technical-professional course will be exempted for a matriculation examination for the Faculty of Law.

C - Regarding INAJ - Bar Association

In the strict sense of the principles, INAJ also belongs to the administration of justice, since the lawyers, as guarantors of the right to defense, are of vital importance in a state with the rule of law. However, we believe that, due to its peculiar nature, INAJ - the Bar Association deserves an autonomous treatment, first of all because the lawyers and the juridical technicians are independent from the State. On the other hand, the announced establishment of the Bar Association implies the institutionalization of such autonomy and independence, and this would not be compatible with a training program that would be entirely common to other institutions of the law administration system.

For this institution we propose:

In the Short Term

- A study on the institutionalization of a compulsory post-graduate study for all lawyers and juridical technicians to be inscribed (definition of the curriculum, schedule, type of examinations, etc.).
- Holding refresher courses for the lawyers currently inscribed, on specific specialization themes.

In the Medium Term

- Institutionalization of the post-graduate studies.
- Institutionalization of specific and periodical courses.
- Reinforcing of the bibliographical fund.

D - Regarding the Public Service School/State and Law School

As far as this component is concerned, the legal definition will guarantee that the teachers hired by other relevant institutions will lecture the subjects of their specialty at the Civil Service School.

E - Regarding the Ministry of Interior School

The juridical needs detected and the activity carried out by this institution recommend the establishment of a specific school which, in coordination with the Judicial Studies School - definition of the Public Ministry magistrates - would have common preliminary training. Experience advises that after

this common preliminary training the respective specialty should be followed, and the professional training program should provide for the conditioning factors, the goals and the means to use.

We thus propose the following:

In the Short Term

- A coordinated study with the provisions for the Judicial Studies Center, so as to harmonize the basic needs of the Ministry of Interior in the legal definition and emphasise the specifics of police investigation functions, so as to obtain a specific curriculum that will be more in harmony with the above-mentioned institutions.
- Taking part in technical-professional training courses, to be given by the Center of Judiciary Studies.

In the Short Term

- Institutionalization of juridical support to an eventual school for PIC agents and inspectors.
- Participation in the library book fund.

Among these measures, the following demand an institutional coordination as a means to make the best of the expenses and rationalize the means:

- the teaching system (Center of Judicial Studies/Faculty of Law/other schools);
- the establishment of a Center of Judicial Studies;
- the reinforcing of the library book fund.

RESOURCES

The fulfillment of the present tasks demands a set of resources, which are described in detail in the reports by the various institutions, an area where the Mozambican Government's efforts will have to prove decisive, due to the World Bank's strict rules for this kind of acquisition.

IV - In item 3 we described the various studies and goals to achieve. From the various lines of action outlined, and with the contributions to collect from this seminar, descriptive charts of the actions to take, the deadline for execution and predictable cost will result.

V - If there are several donors for the judicial area, we will again use the idea that was proposed by Dr. Beverly Carl: to create a consultant council of donors at the relevant institutions, so as to effectively coordinate the actions to sponsor and avoid wastes and/or an unnecessary accumulation and achieving precise and clear goals defined beforehand by the Mozambican counterpart. This definition of the problem should contemplate the complementarity for the achievement of the goals, as is already being done at the present stage, with the short duration courses attended by Mozambican technicians.

Maputo, February 1992

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Statement of Work

1. Objective

The objective of this consultancy is to facilitate legal sector reform by providing specialized technical assistance to the Government of Mozambique (GRM) and other entities involved in provision of legal services and administration of justice to undertake a sector survey and develop action plans in the areas of legal education and drafting of legislation as required and as time permits.

2. Background

a. General

Mozambique currently suffers from the compound effects of years of underdevelopment, lack of human and financial resources in the years following independence, ineffective policies, intermittent but severe drought and prolonged insurgency which has displaced massive numbers of people and rendered normal life impossible for millions more. It is generally estimated that 50-60 percent of the population live in absolute poverty.

Mozambique gained independence from Portugal in 1975. Shortly thereafter, the vast majority of Portuguese, who represented both the bulk of the educated human resource base and the main source of domestic capital and entrepreneurship, departed, leaving the government ill-equipped to begin the daunting task of nation building and social and economic development facing it. In the years which followed, the escalating insurgency devastated rural communities, swelling the numbers of displaced persons and refugees dependent on emergency assistance, and increasing migration to the cities. The confluence of domestic and external problems resulted in a rapid collapse of both domestic production and foreign investment in the economy in the early eighties.

In recent years, however, the GRM has radically changed its economic development policy. An economic reform program (ERP) which has involved a fundamental but gradual shift towards achieving macro economic stability, reducing the comprehensive structure of controls, and facilitating the emergence of the private sector as the major engine of economic growth, was instigated in 1987, and has reversed the previous economic decline.

Economic reform has also been accompanied by moves towards political liberalization, which may well be as important as economic restructuring in determining the success of Mozambique's economic rehabilitation efforts in the long term. From 1987, the

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government began to re-examine its philosophy of central control and in 1990 a new constitution which makes provision for greater civil liberty, freedom of expression, an independent judiciary and a competitive multi-party system was enacted. Since that time, a number of laws protecting rights enshrined in the constitution have been drafted, several political parties have been formed and the GRM has committed itself to multi-party elections.

In spite of progress made under the economic reform program, Mozambique remains one of the world's poorest countries, with a per capita income of \$80-100 per annum. Food aid currently provides nearly 35 percent of marketed grains. Exports provide only 15 percent of the cost of imports, with the remainder being financed by donors. Donor support covers nearly half of budgetary expenditures. Even with net new lending and extraordinary balance of payments support estimated at about \$85 million for 1991 and projected to average about \$900 million through 1995, Mozambique will have an annual financing gap of about \$400 million per year. Taking debt rescheduling into account, current estimates indicate that the GRM will need on average additional external assistance of \$90 million per year to meet its financial requirements under the ERP. Additionally, the next phase of macro-economic reforms will be politically challenging given that they coincide with moves toward a more open political system and holding of competitive elections.

b. Legal Sector

Mozambique operates under a civil law code, with a legal system which is currently an amalgam of the system established by the Portuguese prior to independence and a variety of laws passed since independence in support of a changed political orientation. This system needs to be redefined to make it more internally coherent, bring it in line with the current political and economic order, which has undergone radical changes since the instigation of the economic reform program in 1987, and ensure that it is reflective of the new constitution. There is a need to consolidate legislation, to remove outdated laws from the statute books, to modernize other laws, to write new laws, to develop new legislation in support of provisions contained in the new constitution, and to protect constitutionally defined rights.

The task of restructuring the legal system, improving the provision of legal services, and developing an independent judiciary is complicated by the acute shortage of trained legal personnel, low levels of education, and lack of basic materials necessary for the administration of justice. The court system is under considerable strain, and while the constitution defines the right to legal assistance, there are very few lawyers or para-legal personnel, no functioning system of advice centers or legal aid, and little public awareness of the rule of law.

Additionally, the political and economic changes of the past few years have placed new demands for specialized knowledge on the legal profession.

3. Scope of Work

a. General

The general purpose of this consultancy is to provide technical assistance to undertake a legal sector survey and needs assessment, and perform specific tasks in the areas of legal education and legislative reform as agreed upon with the GRM and USAID. In order to achieve this general purpose consultants with specific expertise in civil law systems, legal education, constitutional law and drafting of legislation will visit Mozambique to work with the Ministry of Justice and other selected counterparts.

b. Specific

The technical assistance in support of legal sector reform will:

-- undertake a sectoral needs assessment to determine legislative, judicial and other legal system requirements for implementing provisions of the new constitution and otherwise strengthening the effective enforcement of legal rights in Mozambique;

-- develop an illustrative action plan indicating legal education requirements, and make recommendation for training, technical assistance, sources of material, personnel and financial support, study tours, internships, seminars and legal programs to meet such requirements;

-- develop an action plan for legal reform, make recommendations for technical assistance, training and other support, and assist with the drafting of necessary legislation as required and as time permits.

Consultants providing such technical assistance will work with the Ministry of Justice, the Supreme Court, the Law School, and the National Institute for Legal Services, as well as with other Mozambican counterparts recommended by these entities. They will also liaise with persons in the Ministry of State Administration currently analyzing patterns of traditional law and authority, and with groups undertaking research into the legal status of women. In addition, the consultants will meet with those donors who are providing assistance in the legal sector.

Sector Survey

The overall aim of the survey will be to assess the current status of the legal system in Mozambique, define its present and projected needs, and establish what assistance is currently being provided or might potentially be provided by other donors.

Specifically, the survey will:

- assess the relationship between the executive branch and the judiciary and suggest measures to promote the independence of the judiciary;

- analyze the structure of the legal system, including examination of the administration of justice in Mozambique, and make recommendations for development or revision;

- examine the constitution, analyze existing legislation and make recommendations for additional requirements to protect constitutionally defined rights;

- conduct a preliminary training needs assessment, and develop a budget and preliminary schedule for possible activities, study trips, training seminars and material needs.

Legal Education Action Plan

The general objective of the legal education action plan will be to assist the Ministry of Justice, Supreme Court and other entities involved in the provision of legal services to develop an overall action plan to meet immediate legal education needs in Mozambique. Given the assistance already being provided to the Law School, the legal education plan will focus attention on in-service training for lawyers and members of the judiciary, basic legal education for para-legals, court reporters and judges without professional qualifications, and public information needs.

In developing the legal education action plan, consultants will work with their Mozambican counterparts to:

- prioritize legal education needs and plans in the context of potentially available resources, identify training options to meet prioritized needs, and make recommendations for pursuing options based on cost effectiveness, duration and timing of training, and numbers trained;

- identify organizations in the United States which could help provide assistance, establish linkages between relevant organizations, universities and professional associations, and develop mechanisms for exchange of information;

-- identify training materials and training of trainer activities which might be of use in Mozambique, and assist with the development of training programs for those members of the legal profession without formal legal qualifications;

-- develop and outline a program of training workshops for court officials and persons involved in the provision of legal services at the provincial and district levels;

-- identify non-formal education interventions to promote public awareness of the rule of law and legal rights;

-- define and prioritize legal education training materials, information and equipment needs.

Legal Reform Action Plan

The overall purpose of the legal reform technical assistance will be to assist the GRM to define immediate legal reform requirements, identify specific technical assistance and training needs, and to provide, time permitting, limited assistance in drafting legislation as agreed upon with the GRM and USAID. Given the limited duration of the technical assistance, the consultant will give priority to identifying legislation required under the constitution, and developing terms of reference for specialized assistance to help draft such legislation. Other tasks described in this scope of work will be undertaken in order of priority agreed upon by the consultant, the GRM and USAID.

In developing the legal reform action plan the consultant will work with Mozambican counterparts to:

-- review the constitution and define the number and nature of laws required to implement the provisions of the constitution and protect constitutionally defined rights;

-- liaise with relevant sectoral Ministries and other donors to ascertain assistance already being provided or scheduled to be provided to assist with drafting of legislation;

-- discuss the interface between customary and civil law with persons undertaking research in this area, identify areas of tension between the systems and suggest possible strategies to reduce such tension; and

-- based on such review, draft terms of reference for specialized technical assistance to assist with drafting of legislation required under the terms of the constitution;

-- review existing legislation in specific areas defined in consultation with the Ministry of Justice and identify laws which need to be amended or re-drafted in conformance with the changed economic and political environment;

-- ascertain type and level of technical assistance available from other sources to meet requirements, and draft terms of reference for specialized assistance to meet remaining needs;

-- determine training needs to facilitate drafting of legislation, and assist with the preparation of seminars to meet immediate needs if required;

-- determine and prioritize resource material and information needs to strengthen Mozambican capability to draft required legislation.

4. Required Level of Effort

One consultant is required for a one month period to undertake the legal sector survey. Three consultants are required for a period of two months each to develop the legal reform and legal education action plans. In addition, five days preparation/closure time in Washington are included for each consultancy.

The consultants should all have considerable experience of working with legal reform in civil law systems, preferably in a country such as Mozambique in which both the economic and political systems are in transition, and which is beset by enormous difficulties in terms of human resources, weak administrative systems, and public awareness of the rule of law. Portuguese language facility is necessary for all consultants, and essential for the consultant providing assistance in legal reform. It is unlikely that travel outside of Maputo will be required during the legal reform consultancy. Limited travel outside of Maputo may be required during the course of the other consultancies.

The consultant responsible for undertaking the sector survey should have considerable prior experience of undertaking such work in developing countries, preferably those which have a civil law system. Knowledge of Portuguese and Brazilian legal systems would be advantageous.

Two legal education specialists are required, both of whom should have experience of working in developing countries which have a civil law system. One of the consultants should have experience of designing in-service training programs for judges and trained lawyers, preferably in a developing country context, and of assessing legal education needs in order to strengthen the administration of justice and provision of legal services. The other legal education specialist should have experience in non-formal education, designing basic training programs for persons without professional training who are nonetheless providers of legal services, developing public awareness programs, and examining the interface between customary and civil law in developing countries.

The legislative reform consultant must have considerable experience in undertaking legislative reform needs assessments, preferably in developing countries. Preference is for an individual with specialized knowledge of constitutional law, civil law codes, and experience of drafting legislation. Knowledge and experience of the Portuguese legal system is essential, and knowledge of the Brazilian legal system desirable. Prior experience regarding legal reform in a Lusophone African country would be advantageous.

5. Required Reports

The consultants will be required to produce a summary report following each consultancy. Six copies of each report, in English, should be submitted. Such summary reports should indicate major activities accomplished, problems encountered, and recommendations for future action. In addition, action plans, terms of reference for additional technical assistance, training plans and/or other written documents as specified in Section 3, Scope of Work, will be produced during the course of the consultancies. Drafts of summary reports will be discussed with Mozambican counterparts and USAID prior to the consultants' departure from Mozambique. Final reports will be completed upon the return of the consultants to the United States, and be forwarded to USAID not later than ten days after the completion of each consultancy. Ten copies of the final report, with an Executive Summary in both English and Portuguese, will be provided. USAID will be responsible for forwarding the final report to the GRM.

6. Relationships and Responsibilities

The contractor will be responsible for providing consultants with specialized skills to undertake the tasks outlined in Section 3, Scope of Work. The contractor will forward copies of resumes of potential candidates for each consultancy to USAID which will act as liaison between the Ministry of Justice and the contractor during the selection process. The selected consultants will work directly with those persons in the Ministry of Justice, Supreme Court, Instituto Nacional de Assistencia Juridica, the Law School and other entities substantively involved with the provision of legal services, development of legislation or legal sector reform.

To facilitate such linkage, the Ministry of Justice will be responsible for establishing a working group comprised of representatives of the Ministry of Justice, Supreme Court and other relevant governmental and non-governmental entities, which will have overall responsibility for developing the schedules for the consultancies, and ensuring that Mozambican counterparts are appointed.

The consultants will be briefed by U.S. Government officials prior to their departure from Washington. In Mozambique they will meet with appropriate USAID/Mozambique, USIS and Embassy staff prior to beginning the consultancy, and will hold regular meetings with USG Mission staff during the period of the consultancy. They will give a close-out briefing to the USG Mission prior to departure from Mozambique, and to U.S. Government officials upon their return to Washington, if required.

7. Logistic Support

a. Ministry of Justice. The Ministry of Justice will have primary responsibility for coordinating Mozambican participation and for establishing a working group as previously described. This group will brief the consultants upon their arrival, make available all relevant background materials, ensure that appropriate counterparts are assigned, and arrange all meetings with GRM officials or non-governmental personnel. The Ministry of Justice or the working group will also be responsible for making all in-country travel arrangements and providing office space for all consultants to permit them to carry out their work.

b. USAID/Mozambique. USAID will coordinate arrangements for study trips by Mozambican personnel with the contractor, and will assist with travel arrangements and visa requirements. For the consultancies to Mozambique, USAID will provide background briefing materials and arrange initial meetings with legal sector working group personnel. It will also make hotel reservations, meet and assist the consultants upon arrival and confirm outward travel reservations. Funds provided under the travel/transportation budget line-item may be used for car hire. Access to the USG Mission health unit is permitted in accordance with established regulations, and funds included in the miscellaneous budget line-item may be used to cover the costs of such use.

c. Contractor. For the consultancies to Mozambique, the contractor will be responsible for arranging all meetings for the consultants in Washington, and for all required administrative and logistical support in the United States. It will also be responsible for obtaining required visas, medical and emergency evacuation insurance, and arranging travel to and from the United States. The contractor will be responsible for meeting their computer equipment needs during the consultancies.

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LEGAL REFORM ACTION PLAN

Prepared by:

Beatriz de Greiff Stack

October 21, 1992

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Preface

The Consultant wishes to thank all the members of the Government of Mozambique, who appear in the list in Annex 1 of this report for sharing their comments and suggestions with her. Without their valuable contribution, it would have been very difficult, if not impossible, to produce this report.

Since the laws of Mozambique are not indexed, the Consultant relied on the knowledge and cooperation of government lawyers and other government officials that implement the laws. They also provided copies of laws and regulations. In addition, representatives of other donors and international organizations have also provided her with useful information and advice which is appreciated.

Chapter I

INTRODUCTION

Remarks

The scope of work undertaken by the Consultant only initiates the ongoing process of updating the laws selected. The nature of this effort and the recommendations for future action have been determined by Mozambique's present circumstances.

Mozambique is among the poorest countries in the world, currently in the throes of a civil war, a serious drought and extreme social transformations. However, the country has a strategic position in Africa, is rich in natural resources, and has a resilient social structure conducive to positive change. There is an enormous need for foreign technical assistance in the legal sector, as well as in all other sectors of the administration. Assistance given by donors in the legal sector is relatively new compared to the assistance given to other programs and projects. With the exception of Norway, donors have only given legal assistance in the last two years.

Most of the Codes of Mozambique are from colonial times, when much of the legislation was written to suit the needs of the existing Portuguese society and not to suit a modern and independent Mozambique. In addition, the country has changed from a centrally planned economy to a system of capitalism and free enterprise. The existing laws will no longer direct the economy of the country. Instead, new laws are needed to regulate the economic activities of the country and serve as guidelines for the practice of capitalism and free enterprise.

Investment in quality legal drafting has long term benefits. A well written law facilitates implementation and ensures domestic tranquility but, it has to be carefully designed to give the expected long term results. The drafting capacity of the Mozambican lawyers has to be improved and the seeds for obtaining such improvement have to be planted. In addition, the very few research institutions dealing with social issues in the country have to be encouraged. Thus, in evaluating the laws of Mozambique, the Consultant has taken into account the institutions that implement these laws.

Terms of Reference--Legal Reform Action Plan

The overall purpose of legal reform technical assistance will be to assist the Government of Mozambique in defining immediate legal reform requirements and identifying specific technical assistance and training needs. In developing the legal reform action plan the consultant will work with Mozambican counterparts to:

-- review the constitution and define the number and nature of laws required to implement the provisions of the constitution and protect constitutional rights;

-- consult with relevant sectoral ministries and other donors to ascertain assistance already being provided or scheduled to be provided to assist with drafting of legislation;

-- discuss the interface between customary and civil law with persons undertaking research in this area, identify areas of tension between the systems and suggest possible strategies to reduce such tension;

-- review existing legislation in specific areas defined in consultation with the Ministry of Justice and identify laws which need to be amended or re-drafted in conformance with the changed economic and political environment;

-- ascertain type and level of technical assistance available from other sources to meet requirements, and draft terms of reference for specialized assistance to meet remaining needs;

-- determine training needs to facilitate drafting of legislation, and assist with the preparation of seminars to meet immediate needs if required; and

-- determine and prioritize resource material and information needs to strengthen Mozambican capability to draft required legislation.

Methodology

The methodology used by the Consultant consists of the following steps:

-- Review of all existing codes, laws, and regulations, with an examination of traditional law and the Constitution, and the state of law making in Mozambique;

-- Analysis of codes, laws, and regulations with respect to constitutionality;

-- Analysis of codes, laws, and regulations with respect to internal consistency and contradiction;

-- Analysis of institutions appropriate for the implementation of the laws with the purpose of identifying changes in the legal system;

-- Review of documents supplied by the U.S. Agency for International Development, the World Bank and other donors to determine what assistance that has already been provided in this area of revision; and

-- Interviews with judges, government officials, members of semi-private organizations, research institutions which publish university materials, and non-profit organizations to ascertain Mozambican needs and concerns.

The Process of Making Laws

The steps for making specialized legislation in Mozambique begin with the formulation and initial drafting in the different Ministries, Secretaries and Commissions of the government or in the Judiciary. Following this, a draft of the proposed law is sent to the Ministry of Justice for comments, changes and observations.

Ministry of Justice Center of Investigation and Research.

After receiving a draft of a proposed law, the Ministry of Justice refers the draft to an appointed working group whose task is to review all the new draft legislation of the country. The working group consists of eight lawyers from the government and private practitioners. This working group review helps to alleviate the work of the Ministry of Justice. The working group appoints one or two lawyers to review each proposed draft law and consults with specialized lawyers when necessary. Once the working group has reviewed draft legislation, the Ministry sends the draft to the Counsel of Ministers. The Counsel of Ministers makes its observations concerning the draft. The draft is then sent to the Assembly for consideration.

At the present time, many members of the government are also members of the Assembly, which has facilitated the passing of new legislation without objection. The coordination of the legal drafting activity is the responsibility of the Ministry of Justice Center of Investigation and Research (Direcao d'Investigacao o Legislacao), (DIL). This section of the Ministry has the following responsibilities:

(a) to prepare and participate in the making of the draft laws and give opinions concerning drafts;

(b) to compile the decisions of the Popular Tribunals and analyze the decisions for future use in drafting legislation;

(c) to do studies concerning the social situation of the country and its effects on the work of the Ministry of Justice;

(d) to produce studies on Comparative Law;

(e) to cooperate and to promote the legal education of the citizens and to promote their participation in organizations and in public debates concerning the issuance of regulations;

(f) to organize a center for documentation and legal information to compile, organize and file legal documents from foreign countries and national sources;

(g) to organize a system to access information in the legal libraries that would promote and improve the index in each library;

- (h) to compile and publish periodic collections of current laws;
- (i) to encourage and publish catalogs, magazines, and pamphlets of legal information;
- (j) to plan and promote publication of legal works.

DIL organizes the participation of Mozambique in international conferences and negotiates international protocols in areas administered by the Ministry of Justice. If DIL could adequately accomplish the functions enumerated in (d), (h), and (i) above, the problems in writing the laws would be greatly reduced. But, that is not possible under the present circumstances.

Deficiencies of DIL

The Need for Greater Legal Resources.

DIL is understaffed and deficient in legal texts, reference materials, and professional legal drafters. The Director of DIL is in England on leave. The Substitute-Director, a very capable professional, is overburdened with a heavy workload assigned by the Ministry of Justice. Except for two law students, there is no other staff. DIL should have the proper resources to fulfill all the duties enumerated above, but the country does not have enough lawyers, nor the research tools such as libraries and computerized information.

The Government of Mozambique does not have the professional law drafters that are present in many other countries. Mozambican lawyers do not appear to be interested in becoming legal drafters. The Government should create more posts and incentives for individuals to become legal drafters. These drafters will need to be skilled at writing and well organized and informed in the subject matter of the proposed legislation.

Participation of other Donors.

DANIDA has improved the general knowledge of legal subjects in the Eduardo Mondlane University by bringing professors to teach International Law, etc., broadening the scope and knowledge of Mozambican lawyers.

To help in the process of legal reform, the World Bank Five-Year Project in Mozambique plans to expend a total of US \$355,000. From this sum funds will be devoted to: retaining six foreign and six local legal experts; providing training seminars for ten Mozambican lawyers abroad; supporting two seminars in Maputo; and printing and distributing standard contracts in Mozambique.

The government of Portugal and the government of Mozambique will shortly sign a protocol by which Portugal will assist DIL in the computerization of libraries. Also, the Government of Portugal supported a ten-day course in legislative drafting ("feitura das leis") that was to be held by the Mozambican Ministry for State Administration in June or July

of 1991. The Consultant was unable to meet with any GRM personnel who may have attended this course, or to assess its effectiveness.

How USAID Could Assist in Improving Legal Drafting

USAID could request the International Law Institute (ILI) in Washington, D.C. to provide information on continuing education programs for attorneys and provide one short course for two Mozambicans on legal drafting. ILI offers a course entitled "Law-Making and Development," which covers the formulation and drafting of laws, and ILI can also provide tailored training to meet the particular needs of Mozambican officials. Checchi and Company can arrange to have ILI provide this training, or A.I.D. can contact ILI directly as follows:

Stewart H. Kerr, Executive Director
International Law Institute
1615 New Hampshire Avenue, N.W.
Washington, D.C. 20009
Tel: (202) 483-3036
Fax: (202) 483-3029

The training program of the American Bar Association (conducted in cooperation with the American Law Institute) is also a possible source of training, although the ABA currently offers no courses in legislative drafting per se.

A training course in legislative drafting in turn will help the Mozambican Bar Association in initiating a training program to be delivered by those Mozambican lawyers trained abroad. USAID can provide books and reference materials from the United States, Brazil, Portugal, and England on legal drafting to the Ministry of Justice. Any such effort should build upon or at least take into consideration the joint Portuguese-Mozambican legislative drafting course noted above.

Legal drafting courses should include the following:

(a) a class instructor well versed in the subject matter in question, and qualified to train participants in that subject matter;

(b) the requirement that each participant research all previous laws that are relevant, as well as indirectly related, to the subject they are dealing with;

(c) the requirement that each participant identify gaps in the laws and consult with technical personnel of a particular agency to obtain information to improve and complete the proposed law;

(d) the requirement that each participant evaluate the capacity of the relevant agency to manage and implement the law;

(e) the requirement that each participant check that the laws on the subject matter in question do not overlap or conflict;

(f) the requirement that the participants compare legislation with that of three other countries; and

(g) the requirement that the participants, as a group, draft a proposed law and discuss it in seminars with the instructor mediating.

Chapter II

ANALYSIS OF SELECTED LAWS OF MOZAMBIQUE AND SUGGESTED REVISIONS

At the beginning of the consultancy, the Ministry of Justice indicated the subjects of the law that needed to be amended or re-drafted to conform to the changed economic and political environment. Those subjects are: Family Law; Code of Criminal Procedure; Penal Code; Code of Civil Procedure; environmental legislation; and commercial laws and related subjects such as the different laws on registration. Other legislation was reviewed by the Consultant with respect to its compliance with the principles enunciated in the new Constitution. The results of the latter review are given in Annex 6.

CODES INHERITED FROM THE PORTUGUESE

Family Law

The Family Law of Mozambique is contained in Book IV of the Civil Code. Some provisions on Family Law are also in the Code of Civil Procedure and the Statute for Minors.

Articles from the Civil Code that Appear to be Unconstitutional.

The Mozambican Constitution of 1990 recognizes the family as the basic unit of society and protects marriage as the institution that secures the values of the family (Article 55). The Consultant has reviewed the Civil Code and finds the following articles of the Code unconstitutional pursuant to Article 67 of the Mozambican Constitution, which establishes that men and women are equal before the law in all spheres of political, social and cultural life:

-- Article 86 states that the domicile of the married woman is that of the husband except when husband and wife have been separated by Court Decree. However, women sometimes work and reside in a different town than their husbands. To conform to the constitution, the law should recognize a different domicile for the wife, if she so chooses.

-- Article 1672 states that "the wife must have the same residence as the husband" except in three circumstances: (1) bad treatment and bad behavior, (2) in the event of necessary public employment and other imperative reasons, and (3) separation and divorce. Again, the location of the wife's work may make having the same residence difficult, and the law should provide for this.

-- Article 1674 states that the husband is the chief and, as such, the representative of the family. Article 1880 also indicates that the father is the chief of the family and as such has special duties concerning the children. As chief of the family, the duties of the father are greater than those of the mother.

-- Article 1678, indicates that the administration of the patrimony is the responsibility of the husband as chief of the family, except in some exceptional circumstances enumerated by the Code, such as incapacity of the husband.

-- Article 1676 states that the wife does not need the approval of her husband to practice a profession or a public function, to publish, to do other work, and/or to dispose of her intellectual property. However, the second paragraph of Article 1676 states that the husband can inform, at the time of a contract between the wife and a third party, that he has not given his consent.

-- Article 1686 states that the wife cannot engage in commerce without the consent of her husband. However, in accordance with the Constitution, women should be permitted to engage in contracts apart from the husband.

-- Article 1677 states that the wife is responsible for the administration of the household. This is unequal treatment of men by the law, contrary to the Constitution.

It is evident that the articles from the Civil Code described above should either be removed or revised. Other problems that arise because of outdated language or concepts in Book IV of the Civil Code include the following:

-- Certain Articles are not applicable to Mozambique such as Article 1651, which refers to marriages in Portugal. This needs to be revised to refer to independent Mozambique.

-- Chapter III refers to "illegitimate children". According to the Constitution, children cannot be discriminated against on the ground of their birth (Article 56). A more neutral term would be "children born out of wedlock".

Areas of Conflict Between the Formal Law and the Traditional System.

Formal law is the written law. Traditional law is defined as: "the bodies of rules which were formerly applied by the traditional courts - whether of the chiefs or of the religious leaders - and which still influence the behavior of large sections of the population to a greater or lesser degree, even though they are not recognized and not applied in the state courts of independent Mozambique."¹

Mozambique has nine major ethnic groups.² As pointed out in earlier studies, it is difficult to implement a unified system of family law in a country characterized by a diversity of family law.³ The major differences between the traditional system can be seen in the way the celebration of marriage is conducted.

The formal law of Mozambique (Civil Code) only recognizes civil marriage as valid. However, the law has not produced its expected result.

Originally, the Civil Code recognized Catholic marriage as valid. (Approximately 10 per cent of the population of Mozambique is Catholic, in addition to several denominations of Protestant religions.) In some churches, couples were required to register in the Civil Registry before the religious ceremony.

In Mozambique, there are matrilineal and patrilineal traditional systems. An example of the traditional matrilineal system exists in the District of Magoé in Tete Province. In this district, a young man proposes marriage by paying the girl or her grandmother or aunt a symbolic sum of money. If he gets half back, he knows he has been accepted. After the marriage is agreed on, the groom moves to the household of the bride, where he must perform certain services such as building a house. After performing these duties, he can move to a new house with his family not far away from the wife's family.⁴

In the south of Mozambique and other parts of the north, the traditional system is patrilineal. In this system the wife leaves her family and goes to live with the family of the husband. *Lobolo* is a form of compensating the parents of the bride for the economic loss of the daughter. It was traditionally given in the form of cattle, but it is also given by way of a symbolic sum of money.

Approximately 30% of the population of Mozambique is Moslem. Moslems marry in a ceremony called *Nika* in the presence of a Sheik or other political leader. A present called "mahari," which consists of money or valuable ornaments, is given to the bride during the ceremony.⁵

For a more in depth analysis of the Mozambican traditional system, it would be advisable to conduct more research in areas such as family inheritance between different groups and the responsibility of family members for the children. For instance, in a matrilineal society, a woman's children belong to the female line and frequently adopt the surname of the mother, whereas the reverse happens in a patrilineal society. What further conclusions can be drawn from this divergence? What are the implications for inheritance and responsibility for child rearing?

Some of the lawyers of Mozambique have concerns about the feasibility of engaging in more sociological or anthropological research in the country. Their argument is that the war has destroyed many of the traditional lifestyles and does not allow for proper information gathering. It is clear that the society of Mozambique is being transformed very rapidly. An estimated 50 per cent of the people of Mozambique have moved to the cities due to the war. This migration to urban areas facilitates the gathering of information about the traditional system from the refugees and from the decisions of the *Tribunales Comunitarios*.

At the present time, the Ministry of Justice faces the dilemma of having to write a new family law that applies to the majority of the people. The traditional system of Mozambique formed the cultural foundation of the country and cannot be disregarded. Changes to the traditional societies might be accomplished by massive education rather than the imposition of laws inimical to these societies. The Mozambicans themselves should know the best course. If anthropological research is not available this effort would be hampered.

Since marriage is both a religious and secular institution, and religious beliefs are recognized by the Constitution, a uniform family law should provide a system of registration that can accommodate traditional and religious forms of marriage, including, if desired, common law marriage. Such a registration system could precede the full development of family law and need not address the full range of procedure and obligation that result from traditional or religious marriage ceremonies. However, without a registration system, implementation of a universal family law will be virtually impossible.

Mozambique has courts of law that apply the written law, and also has the *Tribunales Comunitarios* which are not courts of record, but more conciliatory tribunals. The mission visited one of the *Tribunales Comunitarios* of Maputo, and observed a case. The judges took into account the marriage of a couple in a patrilineal system. However, the judge found the husband guilty of having abused his wife and ordered him to perform community work. The findings of the judges of the *Tribunales Comunitarios* are not enforceable. If the parties do not agree with the findings of the tribunal their recourse is to go to the District Court. The review of the decisions of the *Tribunales Comunitarios* is probably the best way to find the traditional rules of Mozambique today.

Drafting a Family Code for Mozambique.

The Civil Code of Mozambique is the same as the Code of Portugal used during the colonial period and retained by the new country after independence. There is no doubt that Mozambique needs a new Family Code to conform with the Constitution of 1990. Drafting a Family Code is, therefore, a high priority for the government of Mozambique. The Consultant has reviewed the projects of other donors and found no recommendations concerning the drafting of a Family Code. The Ministry of Justice, where the work should originate in this area, is short of legal personnel, as explained in Chapter II of this Report.

USAID might be able to assist in the drafting of a family code. This Consultant has prepared a list of subjects that a senior Consultant on family law should take into account in drafting the new code, see Annex 2, and terms of reference for a Legal Consultant specializing in Family Law, see Annex 3. The Consultant recommends that, to the extent possible, the matter of Family Law be preserved in a single Code not only for reasons of tradition but for systematization.

The Need for More Research in Conjunction with the Drafting of the New Code.

Certain topics of the law require more anthropological research. Case by case research in the *Tribunales Comunitarios* would permit those in charge of producing a Final Draft on the law to decide whether or not to include traditional rules in the Family Code. Topics that need further research are the following:

(1) Transfer of property between members of the Matrilineal and Patrilineal society and Moslems;

(2) Inheritance between the Matrilineal and Patrilineal groups;

(3) Family relationships--for example, some of these groups conceive of cousins in a manner that diverges from the Civil Code;

(4) Adoption in Mozambique--this concept is enunciated in the Civil Code but does not have any uniform application among the traditional groups of Mozambique.

Encouraging Mozambican Research Institutions to Broaden and Deepen Family Research.

At present, some Mozambican institutions are doing research on family issues. The Center of African Studies, for example, is making inquiries on family law issues as part of a regional research program concerning "The Legal Situation of Women in Southern Africa". This organization has produced papers on "Women and their Rights to Alimony", "Women and Inheritance Rights within the Legal System of Mozambique", and "Customary Law in the Sphere of Property and Inheritance". The Center of African Studies works in coordination with the Ministry of Justice and cooperates with INAJ in the production of pamphlets for dissemination among women.

The Consultant recommends, after consultation with the Director of Women's Research Programs, that the work of the Center of African Studies be assisted by an American legal anthropologist with knowledge of African issues to help them in the methodology and conceptualization of the research. There is very little research done in Africa on this issue and the Consultant strongly recommends the encouragement of research efforts. The terms of reference for a consultant in legal anthropology is provided in Annex 3.

As explained in Chapter II, DIL should do the analysis of the *Tribunales Comunitarios*. The judges from these Tribunals are ordinary people who represent community traditions and values and apply common principles. In the conciliatory tribunals, the traditional forms of marriage are accepted as well as the traditional ways of resolving disputes between family members. The *Tribunales Comunitarios* are a very good source of information on how the traditional norms operate.

The Social Worker Service of the Ministry of Health will be doing research on adoption in Mozambique and plans to pass a separate law on adoption. Research on adoption in Mozambique is assisted by international donors. The issue of adoption is of growing importance, since the war has left many children orphans.

The Code of Civil Procedure

The Code of Civil Procedure also needs a major revision, as it is excessively formalistic. Among the major problems of the Code are the following:

-- Article 32 requires the presence of an attorney in the process. In a country with only 100 lawyers for 15 million people, the parties should be permitted to represent themselves or provide an agent at least in simple cases.

-- Article 264 gives the parties the responsibility of going forward with the process, and although Article 266 authorizes the judge to control the process, in practice the cases remain on the docket for a long time because the parties do not activate them. Article 285 permits the interruption of a case when the parties have not gone forward for one year. This seems excessive -- perhaps the judge should have the authority to dismiss a case interrupted for more than one year.

-- Article 290 deals with arbitration. It should be expanded to include what matters are subject to arbitration; guidelines for drafting contract clauses so the arbitration award can be enforced later in court if necessary; who may be an arbitrator; and how many arbitrators are necessary for a case.

-- The jurisdiction of the different courts for civil matters is not clear in the Code of Civil Procedure. Jurisdiction is asserted on the basis of the quantity and subject matter and the place where the action occurs.

-- Some Articles of the Code refer specifically to Portugal, and are no longer applicable.

-- Actions for emergency situations (Procedimientos cautelares) could perhaps be made more available. For example, a good feature of the present code is that child support actions can be requested on an emergency basis.

Some lawyers interviewed expressed the opinion that the Code of Civil Procedure is inflexible. If everything is not precisely the way the Code requires, the judge orders revision of the documents and procedure, which delays the process considerably. This is the major problem encountered by the practitioners under the Code. The Consultant is of the opinion that helping to draft a new Code of Civil Procedure is a priority.

Drafting a New Code of Civil Procedure.

Since Mozambique is changing from a planned economy to a free economy, the new private enterprise community needs a sound legal system to settle disputes in an efficient manner. Drafting a new Civil Procedure Code will benefit the community and accelerate modernization. At the present time no other donor has considered drafting a new Code on Civil Procedure. The Consultant recommends that USAID provide the Ministry of Justice with a Consultant that will draft the new code. Terms of Reference are provided in Annex 3.

Commercial Law

The present Commercial Code of Mozambique is the Code of Portugal of 1888. The Code regulates contracts and obligations between merchants. It contains articles on the following subjects: sale of goods, accounting records, insurance, commercial tribunals, commercial paper, corporations, brokers, agency, and merchant marine law. It is obvious that the code does not regulate many areas of modern commercial activities. For example, in the area of societies, the country needs an institution that controls the sale of shares in corporations. In order to attract foreign investments, the Consultant believes that changes have to be made to the Commercial Code and other commercial legislation has to be added.

The following subjects of the legislation have to be reviewed:

- (1) commercial paper;
- (2) sales of goods;
- (3) insurance;
- (4) patents, trademarks, and copyrights;
- (5) secured transactions;
- (6) tax law; and
- (7) requirements for accounting in the industrial and commercial sector.

Commercial transactions have been evolving for a hundred years since the present Commercial Code was enacted. Commercial contracts are based on customary practices, and modern codes reflect changes in those practices. It is evident that the Code of 1888 does not reflect the world of economic transactions today. For example, commercial tribunals as provided in the code have been replaced by centers of arbitration; and commercial paper legislation has been simplified and clarified in most of the countries of the world.

Many industries will not place subsidiaries in Mozambique without protection of intellectual property rights. Mozambique is not a member of the World Intellectual Property Organization (WIPO) with the corresponding international agreements related to intangible rights. The USAID might help Mozambique to join WIPO, so Mozambique may profit from the legal advice provided by WIPO. That assistance might include helping Mozambique draft laws on intellectual property protection and help to establish an office to protect intangible rights of their citizens and foreigners doing business in Mozambique.

The Law No. 24-91 of 31 December 1991 states that insurance services can be provided by private and public institutions if they are properly registered. It is the duty of the Council of Ministers to approve the regulations dealing with insurance.

Tax law has to be continuously reviewed to provide incentives and insure competitiveness as the country moves away from state ownership and direction. The government of Portugal is signing a protocol with the government of Mozambique to assist in drafting a new tax code.

The counterpart wishes assistance from the USAID in drafting commercial legislation for Mozambique. Terms of reference for different consultants in the commercial sector are provided in Annex 3. Prior to making any arrangements in this area, however, the USAID should ensure that the work of the World Bank is not duplicated. Annex 5 lists recent laws dealing with economic issues.

Registration Codes (Codigos de Registro o Notariado)

The Consultant reviewed the following Codes:

- (a) Notary (Codigo do Notariado);
- (b) Registration of Automobiles (Codigo do Registro de Propiedad Automovel);
- (c) Recorder of Deeds (Registro Predial); and,
- (d) Civil Registration (Registro Civil).

The Consultant did not review the Registration of Commercial Transactions because another Consultant has submitted a draft on this subject, including:

- list of books where the registries are maintained;
- instructions about how the files have to be kept;
- enumeration of the duties of the Notary and Register;
- how to do the sealing;
- instructions as to how to give copies of documents; and,
- detailed requirements for registration.

Shortcomings of the Registration Laws are as follows:

- the clerks of the Office of Registration do the registration by hand;

- at the present time, space in the registers is limited;
- all court cases have to be registered, and the need for copies of these official records cause delays in the legal process.

The process can be improved by:

- adopting readily available technology for records keeping systems such as microfiche or equivalent to reduce space and make records more readily available;
- reviewing the legal requirements for notaries and registers to determine the need for each requirement. For example, for some documents in litigation it may be sufficient to require the litigating parties to provide copies to each other and the judges without the need for a record in the register's office;

The procedures for registration should be simplified for efficiency and economy. Terms of reference for a consultancy appeared on Annex 3.

Criminal Procedure

The Code of Criminal Procedure of Mozambique is the same as the Code of Portugal used before independence. It was approved in Portugal by Decree Number 16482, February 16, 1929 and extended to the colonies by Decree Number 19271, January 24, 1931. The principal characteristic of this Code is that it is inquisitory rather than accusatory. The process is kept secret until the accused is brought for the first time to the judge.

The criminal process in Mozambique is divided into three stages. These are:

1. *Instrucao preparatoria* (Investigatory period);
2. *Instrucao contradictoria* which was abolished by an Order of the Supreme Court in 1973.
3. Judgement.

The Investigation is conducted by the police, in principle under the supervision of the Attorney General's Office (Procuraduria). However, supervision is limited due to the lack of attorneys in the Procuraduria. The police normally conduct the investigation during a period of 34 days. The Mozambican Police are not under the administration of the Procuraduria. Because the country does not have a sufficient number of lawyers, if the accused does not have an attorney, the judge appoints someone, not necessarily a lawyer, to fill the requirement of the law.

The Code has several deficiencies in light of the new Constitution:

- (1) The duties of the police are not spelled out in the Code.

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(2) The rights of the detained and the accused, from the moment of detention to the moment he or she is brought in front of the judge, are not indicated. According to Article 98 of the Constitution, no one may be arrested and put on trial except within the terms of the law. According to Article 101 of the Constitution, preventive imprisonment shall only be permitted in cases provided for by the law which shall limit the duration of such imprisonment. The law must therefore specify when preventative imprisonment is permitted.

(3) The accused can be interrogated in the presence of the judge. Modern codes have incorporated Miranda warnings--the name of a famous United States case defining the warnings the police are required to provide the accused about his (her) rights. Those rights are: (a) he/she has the right to be silent; (b) he/she has the right to be assisted by an attorney; (c) if he/she decides to speak, that evidence can be used against him in a court of law. A Mozambican version of the "Miranda" law exists, although the text was not made available to the Consultant. Despite the existence of this law, the police and other authorities routinely fail to inform defendants of their rights.

(4) The Code does not permit the presence of the defense attorney in registry inquiries, lineups, reconstruction of the crime, or interrogation. Auxiliary legislation permits an attorney to be present. This provision was not made available to the Consultant, and therefore more detailed comment is not possible.

(5) The Code does not state which the government official is to custody of weapons used to perpetrate the crime.

(6) The Code does not allow bail, although auxiliary legislation apparently does provide for bail. Again, the Consultant was not provided with the text of this legislation.

(7) The different stages of the process should be clearly stated in the Code. They are: the arrest warrant, the initial appearance before the judge, the indictment, the arraignment, the trial, and the judgement.

(8) Habeas corpus should be examined further to determine whether it conforms with the requirements of Article 102 of the Constitution paragraph (2). The Code does not contain sufficient information.

For the reasons given, the Consultant agrees with the Government of Mozambique that a new Criminal Procedure Code is needed. However, USAID need not devote effort to drafting a Code of Criminal Procedure at the present time, because this role will be played by the Government of Portugal. The Ministry of Justice of Portugal and the Ministry of Justice of Mozambique will shortly sign a Protocol indicating the terms of reference for a Portuguese Consultant, who will help the Ministry of Justice in drafting the new Code on Criminal Procedure.

The Penal Code

In the Consultant's opinion, the Penal Code contains crimes that are unconstitutional. Also, some crimes could usefully be broadened, such as those provided in Chapter VII which enumerates crimes against Public Health and Environment. Other crimes, such as libel and slander, could be recognized as torts (quasi-contract theory on civil law countries) rather than crimes, as in many other countries.

POST-INDEPENDENCE LAWS

Law Governing the Attorney General and Solicitor's Office

The following articles of the Mozambican Constitution deal with the jurisdiction of the Attorney General and Solicitor General:

-- Article 177. "The law shall determine the structure, composition and operation of the Office of the Attorney General and of the Supreme Council of the Public Prosecutor."

-- Article 178. "1. The Public Prosecutor's Office shall constitute a hierarchically organized magistracy, subordinate to the Attorney General of the Republic. 2. In exercising their functions, the officers and agents of the Public Prosecutor's Office shall be subject to the principles of legality, objectivity and impartiality, and shall be guided exclusively by rules and matters of law."

-- Article 179. "The Public Prosecutor's Office shall represent the State before the courts, shall control the legality and the duration of detentions, shall initiate criminal prosecution, shall enforce criminal sentences, and shall ensure the legal defence of minors and of absent or incapacitated persons."

When the Consultant visited Mozambique, the offices of the Attorney General and Solicitor General did not have an effective organic law enumerating the responsibilities, qualifications, and service structure for these offices. As indicated in the Legal Sector Assessment report, the 1989 Law on this subject is incomplete and under review.

Apparently, the duties of the Solicitor General and the Attorney General are now performed by the same person. The Attorney General of Mozambique exercises control over the legal affairs of the national, provincial and local governments and their various administrations. The Attorney General represents the state's interests. He also takes legal action to protect state property and prosecutes crimes against the state. He appears in person before the Supreme Court. The Attorney General's Prosecutors oversee the investigation of criminal cases. The investigations conducted by the police department are supervised by the Attorney General's Prosecutors.

The Minister of Justice is the chief legal advisor of the Government. He provides legal advice to the administration, and therefore he can establish consistent and uniform state legal policy. As chief legal officer, the Minister of Justice offers preventive legal

advice to persons designated by the law. He also insures the legality of state government action.

The Public Prosecutor's office ensures the legal defence of minors and absent or incapacitated persons. At the present time, the President of Mozambique appoints this official, and the President can remove him at will. This is a questionable practice because an Attorney General should be independent of direct political pressure. The Attorney General must be barred from setting up private practice. This diminishes the possibility of conflicts of interest. However, he must also receive adequate compensation according to the law.

The above information was gleaned from interviews and meetings with the Attorney General's Office. In addition, the consultant reviewed pertinent procedural codes and legislation in order to get an overall picture of the different responsibilities faced by the Mozambican Attorney General's Office. At the time of the consultancy, the office of the Attorney General informed the consultant that an Organic Law for the Attorney General's office was in preparation. However, as the draft was not provided, it is not possible to comment on the laws adequacy or need for revision. A law of this kind is clearly needed.

It is recommended that the USAID assist the government of Mozambique in drafting the Organic Law governing the functions of the Attorney General's Office, which will include the head of the Procuracy (Criminal Investigations) and policing of government. Annex 3 contains details of the terms of reference for a consultant in this area.

The Environmental Laws

1. The National Commission of the Environment.

On 2 June 1992 the President of Mozambique, by Presidential Decree, created the National Commission of the Environment (Comissao Nacional do Meio Ambiente, Decree Number 2/92). The new Commission is subordinate to the Counsel of Ministers (Conselho de Ministros), but enjoys administrative autonomy. The Headquarters of the Commission is in the city of Maputo; however, the Decree provides for the creation of regional centers in other parts of the country.

The objectives of the Commission are the coordination, study and promotion of activities in the area of environment. The Commission also determines the policies to be followed, performs studies of the ecosystems and gives opinions concerning the impact on the environment of important projects, establishing a systematic control of Environmental Impact Statements.

The Minister of Mineral Resources (Ministro dos Recursos Minerais) is the President of the Commission; its Vice-President is the Minister of Construction and Water (Ministro da Construcão e Aguas). The Commission also has the responsibility for public education on environmental matters and the coordination of the technical support of International Organizations. The Commission has a President that oversees the Departments of Research

(Pesquisa), Planning (Planificacao), Management (Gestao Ambiental), Education and Administration. The Commission President also coordinates the activities of the Permanent Consulting Group (Grupo Consultivo Permanente), and the activities of the several Departments and Provincial and regional delegations for the discussion of laws, and regulations concerning the environment. The preparatory work of the Commission was carried out by the National Institute of Physical Planning (Instituto Nacional de Planeamiento Fisico), and the Presidential Decree transfers the personnel and facilities to the newly created Commission.

At the present time, the Commission has four lawyers working on, among other things, the preparation of a new Environmental Law for Mozambique. They are assisted by a Consultant from UNDP. The group is quite capable and dynamic. They are preparing a Group Discussion concerning the project law. (The Meeting started July 3). This is encouraging because many government programs have failed as a result of half hearted enforcement of the rules.

Members of the Commission have requested assistance in the preparation of guidelines for the Environmental Impact Assessment (EIA). The EIA is a planning instrument which assess the possible impact of a proposed project on the environment before any decision is taken to implement the project. It is a formal procedure to identify, analyze, interpret, predict, and communicate the possible environmental effects resulting from a project which, when weighed against the benefits resulting from such proposed or alternative actions, will provide guidance in reaching decisions. Early attention to these matters can avoid the serious potential threats to health and irreversible damage to the ecosystem. The disastrous health situation in Eastern Europe, which resulted from disregard of the possible ecological effects of development can, in this sense, forewarn us.

2. Possible Support by A.I.D.

USAID could lend support by providing the Government of Mozambique copies of United States Federal Laws concerning the environment, for use as a reference. The British Library in Maputo is presently the only Library in the country that contains technical and legal books. The U.S. Environmental Protection Agency (EPA) has developed a considerable number of books and publications on environmental issues that could be very valuable for Mozambique. In addition, microfiche and other advances permit sharing publications at relatively low cost. This Agency also has an International Department that is advising foreign countries.

The Consultant recommends that USAID provide the Commission with a specialized consultant on this issue. Since the United States was the first country to require Environmental Impact Statements, the Corps of Engineers of the United States has the best technical expertise to share in this area. An expert is needed in the formulation of the Environmental Impact Statement regulations and legal review of the same. Terms of reference for this consultancy are given in Annex 3. Other legal consultants in the future can also advise the Commission in those areas of the environmental law where the United States has the lead, such as: the Protection of Coastal Zones, Erosion Protection, National

Parks Management, and the participation of non-profit organizations in the protection of the environment.

3. Natural Resources Laws.

During the visit to Maputo, the Consultant collected the laws and regulations that directly or indirectly refer to natural resources, to find gaps in these laws and areas where there is need for greater implementation. Areas in need of revision include the following:

(a) The Water Law Number 16/1991 of 3 August

This law defines the water resources of the country which are now in the public domain, the water administration, the need for a survey of all the waters of the country, the general use of the resource and the priorities for its use. The hydrological resources of the country are now under the control of this new Law. It establishes a new policy of water administration, contemplates the creation of a system of protection, conservation, control, and utilization of the resource. The private use of water is recognized and permits and concessions are granted.

The management of the water resource is the responsibility of the Ministry of Construction and Waters. Officials from the Ministry desire a Consultant help to set up a Water Administration Unit within the Ministry. Hydraulic works are subject to Environmental Impact Statements. The Law creates a National Inventory, a Water Recording system, and regional administration units. The Water Administration unit will be responsible for issuing permits and water concessions, and for imposing sanctions on polluters. This law establishes priorities for use. Water for personal consumption is the first priority. By way of regulation, zones of protection will be created. In such zones the construction of buildings will be restricted. Officials from the Ministry of Construction and Water wish to modify the old Construction Code, stating that it is no longer suitable for the needs of the country.

Article 46 of the Water Law of 1991 deals with the subject of irrigation. It is directed at taking the proper and economically efficient measures to minimize the loss of water due to infiltration, evaporation and water escape. This article does not take into account:

-- the very serious problem of salinization and how to deal with this problem. Mozambique has a long coast, and fresh water has to be protected from the encroachment of sea water.

-- the fact that private investors do not want to invest in long-term and expensive measures of conservation because the land does not belong to them in Mozambique, but rather to the State;

-- the very old Tax Code of the country which does not give incentives to private investors in irrigation projects; and,

-- even though the Article allows the regulations, the principle of relying on the investors to do the improvements cannot be changed by way of regulation.

(b) Other Government Institutions dealing with Water Related Issues

The Ministries of Agriculture, Foreign Relations, Cooperation, Industry and Energy, Mineral Resources, State Administration and Health act in coordination in the management of the water resource. The Consultant visited other government institutions that deal with water resources, namely the National Program for Rural Water (PRONAR) of the National Administration of Water (Direcao Nacional do Aguas). This institution promotes and coordinates the construction and rehabilitation of wells for the rural population of the country. It has a central office in Maputo. At the provincial level, the Rural Provincial Service administers the service (Servicio Estaleiro Provincial de Agua Rural, EPAR's).

PRONAR's main purpose is to improve the health conditions of the rural population by providing clean water 500 meters away from huts. The goal is to supply water to 35 per cent of the rural population by the year 1995. PRONAR works together with two other institutions, CEOMOC, which drills wells, and HIDROMOC, which provides the equipment systems for water purification. This institution has been supported by ten donors, utilizing a total of US \$18,609,300. PRONAR coordinates its work with the Ministry of Health in teaching how the beneficiaries may reduce exposure to water-borne diseases.

After reviewing the documents provided by officials of this institution, the Consultant sees the beginning of the standardization of the industry in the country. Officials from the Ministry of Industry and Energy also express a desire for technical and legal assistance in the area of standardization. Another preoccupation of the officials from the Ministry of Construction and Water is to review the Planning Code for the cities. The Consultant does not advise USAID to provide advice in this area because the World Bank is already advising on these matters.

(c) Ministry of Health, Department of Environmental Health

Controlling the water quality of the country is the responsibility the Ministry of Health (Article 56 of the Water Law of 1991). Under the Minister of Health is the National Health Center (Direcao Nacional do Saude), which has a Department of Environmental Health. The Section of Water Hygiene and Food, Environmental Hygiene, Occupational and International Health report to the Department of Environmental Health.

The Consultant visited the National Hygiene Laboratory for Water and Food. The laboratory personnel work hard, but they need laboratory equipment to be able to control pesticides in food and water and to test the chemicals in food and water as well. The officials of the laboratory expressed their interest in working with American health institutions on investigations of conditions in Maputo and Beira. The National Hygiene Laboratory also services private individuals and institutions. They expressed the desire to make the institution more profitable because the country did not have the resources to properly equip the laboratory.

The Department of Environmental Health has made a recompilation of Health Laws which are listed in Annex 4 of this report. The Department does not have a lawyer, making it difficult to propose changes to the laws and regulations. For example, the Regulation on Pesticides, Diploma Ministerial No. 88/1987 of 30 of September, determines the quantity of the fines for violation of the regulation. These fines are now too low, the amounts need to be increased.

The Consultant advises that USAID provide the Ministry of Health with the Services of a Senior Technical Advisor in Water Standards. The terms of reference for a Consultant in this matter are attached to this report in Annex 3.

(d) Land Laws

In Mozambique, land is held in trust for the benefit of the people and belongs to the State. Farms cannot be privately owned. The Land Law No. 6/79 of 3 June, 1979 makes it clear that no private legal transactions in land are permitted. Land can neither be sold nor mortgaged. However, the Constitution permits the use and enjoyment of the land. This form of land title appears to be one of the principal barriers to economic development. However, Law No. 1/1986 concerning the Use of the Land fixes the use and enjoyment of the land up to a period of 50 years. This period can be renewed by the successors.

The Land Regulation, Decree No. 16/87, states that any person or corporation, national or foreign, has the right to have legal title over the use and enjoyment of land. The government entities that may authorize the use of the land are: the city councils, the provincial government, the Minister of Agriculture, the Minister of Planning and the Council of Ministers. The Council of Ministers decides requests concerning the right of use and enjoyment that exceed the jurisdiction of the Minister and Governors of the Provinces.

Pursuant to Article 12, the holder of title over the use and enjoyment of the land can mortgage the buildings. This Article creates a major inequality because the owners of buildings can have access to collateral. By contrast, the farmers do not have the right to mortgage land for farming activity. It is clear that providing farmers the right to mortgage land would promote agriculture. Following the same legal theory, there is the question as to whether farmers should be able to mortgage their cashew and other productive trees.

The situation of titles over the use and enjoyment of land in Mozambique is critical. Farmers do not usually register their land, although some of the families have been there for generations. At the present time, millions of farmers are refugees in foreign countries because of the war. Some day they will come back to look for the land they were forced to leave. The same situation occurs with the expatriates, who also want to claim the land. Another area of traditional law that deserves research concerns customary notions and practices of land tenure. It is the understanding of the Consultant that the Land Tenure Center of Wisconsin is cooperating with the government of Mozambique in the area of Recording of Deeds.

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The Laws of the Press

The Law Number 18/91 of 10 August 1991 guarantees the liberty of expression and freedom of information of the press which is supported by the Constitution of 1990 in Article 74. This law covers in considerable detail the principles of dissemination of information as they apply to the public and private sectors and include graphics, radio, television, movies and any other written material directed towards dissemination. Newspaper ownership is limited to Mozambicans, though foreign capital is allowed in the formation of a private newspaper corporation to the extent of 20 per cent. The directors of such newspapers, however, must be Mozambicans.

The law defines who is a journalist and indicates his or her rights and duties. The liberty of the press includes access to information sources, protection and independence of secrecy of sources of information and the right to establish newspapers and other publications. The right of the people to have access to information is also protected by the law. Political parties with representation in the National Assembly are provided access for limited times to the radio and television.

Further, this law enumerates the aims of the press. These aims are : (a) the consolidation of national unity and the defense of the national interests; (b) the promotion of democracy and social welfare; (c) cultural, scientific, economic and social development geared to an increase in the level of social conscience, education, and culture of the citizens; (d) provision of popular access to facts, information and opinions; (e) education of the citizens; (f) interchange of ideas between the government and the citizens; and (f) promotion of a dialogue between the cultures of the world.

The right of response is provided in the law. If any person or institution believes that a publication has caused moral damage to its reputation, he (she) has the right to an answer. The publisher must write an article or retraction explaining that the prior information is incorrect. If the publisher does not comply with the requirements, the interested party has access to the courts. The law conforms to the Constitution; however, it provides for a criminal penal action for libel and slander, which is viewed as excessive because it has a detrimental effect on the rights of free press. In the United States, for example, libel and slander are subject to civil actions in tort. It will be important to expose the Mozambicans to issues of the constitutionality of freedom of expression.

The 1991 law also creates the Superior Counsel of Social Communication (Conselho Superior da Comunicacao Social). Membership of the Counsel consists of: two members nominated by the President of the Republic; four members elected by the Assembly; a member of the Superior Counsel of the Judiciary (Conselho Superior da Magistratura Judicial); three representatives from the press union; and a representative of the press. The members are elected for a period of five years. The purpose of the Counsel is to see that the law is observed.

Labor Law

The Labor Law (Lei No. 8/85 of 14 December 1985) is the umbrella law on the subject. Chapter I defines the scope of application of the law. The law applies to all employers including government corporations, companies with government and private participation, and the corresponding workers (nationals and foreigners) that reside in the country. The cooperatives are regulated by articles of incorporation and bylaws. Civil servants are not subject to the provisions of this law.

In Article 2, the Law authorizes the Secretary of Labor and the Secretary of State to issue regulations (Diplomas) in specific areas of the law. The law is quite advanced, prohibiting discriminatory practices and stating that "all citizens have the right to work, regardless of their ethnic origin, sex, religion, race, color, social position and public opinion". The Secretary of State in Coordination with the National Commission of Planning formulate the implementation policies to obtain the full utilization of the labor resource.

(1) Types of Contracts

The labor relationship is created by contract that can be collective or single (Article 4). The Law defines the labor contract as "an agreement by which a person or a group of persons oblige themselves to perform an activity for another person or an employer and under his (her) direction receiving in exchange a reward" (Article 5). The labor contract must be in writing (Article 7). The duration of the labor contract can be for a definite or indefinite period of time (Article 9). The employee can be subject to a probationary period (Article 13). The law allows for the transfer of the employee (Article 17 to 21). In addition, it specifies when the contract can be suspended (Article 23).

The labor contract can terminate for the following reasons: (a) agreement between the parties; (b) unilateral withdrawal of one of the parties with adequate reason; (c) unilateral withdrawal of any of the parties with notice in advance; (d) judicial decision and lapse of time (Articles 24 to 32). The above-mentioned articles comply with Article 87 of the Constitution, which guarantees employment dismissal legislation.

Article 35 of the Labor Law authorizes the Collective Bargain Contract; however, it does not authorize specifically the right to strike as required by the Mozambican Constitution of 1990 in Article 91 (1) and (2). Article 37 permits the Secretary of State and Labor to establish regulations concerning the subject and form of collective bargaining by way of negotiation and conciliation.

The law establishes: the minimum age for employment - 18 years of age (Article 41); employment for occasional and seasonal workers (Article 46); the right to a certificate of good service (Article 35); training in the country and abroad; promotion (Article 119); particulars of workers' obligation and rights (Chapter IV); and work holidays. Article 59 also enumerates, in great detail, all the obligations of the workers in a very paternalistic manner. The law furthermore relates the kinds of disciplinary measures that employers can impose against employees. Examples of these measures are: fines consisting of 20 days of

salary, compulsory reform, public reprimand and loss of employment. In order for the employer to apply these reprimands, the corresponding union of workers has to be notified (Article 102).

Chapter XII guarantees the protection and the hygiene of the employees in the work place. Work inspectors and work centers are responsible for enforcement of government regulations. It is the responsibility of the employee to observe strictly the measures for his (her) protection. The Secretary of State and Labor and the Ministry of Health in cooperation with the labor unions, establish the regulations for each activity.

(2) Workman's Compensation

The Law defines work accidents (Articles 140-142) and illnesses caused by the work environment (Article 143). The worker who has an accident must notify the employer. The employer, with the worker's union, has the obligation to register the accident. The worker that has an accident or illness related to work is entitled to the following: (a) the employer must send the worker for immediate medical attention; (b) the worker is entitled to medicine and orthopedic instruments; (c) if the worker is at a distant place from a hospital or health center, he (she) is entitled to be transported for medical assistance with a family member; (d) the worker receives an advance of one month's of salary depending on his (her) health condition, and (e) the employer is responsible for the expenses of the worker's funeral.

The employer must make an effort to find suitable work for the employee who has suffered an accident or work related illness (Article 148). An evaluation of the extent of the injury must be made (the law is not very clear as to when a medical exam should be conducted, sometimes more than a medical exam is needed). The Ministry of Health is preparing regulations instructing the industries to have primary care assistance for accidents and illnesses of employees.

(3) Statute of Limitations

If the worker is entitled to compensation and does not exercise his (her) right within one year of the time when the accident occurred, the right is lost. If the employee who suffers an accident does not comply with medical instructions, he loses his right of compensation.

(4) Social Security

In Article 146, the law establishes a social security system for the labor force in the event of illness, accident, maternity, disability, old age, and the well being of the family of the worker. The Labor Laws of Mozambique are quite good. They should, however, be extended, in compliance with Article 91 of the Constitution, to include the right to strike. Importantly, neither the social security nor the labor laws have implementing regulations.

The law should also provide for the protection of union leaders against encroachment from the employers for their union activities. The Government of Mozambique is assisted at the present time by the Government of Italy on labor law matters. A Consultant in this area is not recommended.

Chapter III

PRIORITY ACTION RECOMMENDATIONS

Developing Capacity for Legislative Drafting

DIL understaffing, lack of resources such as legal texts, reference materials and professional legal drafters, limits considerably the ability of the institution to draft effective legislation. The creation of posts and incentives for legal staff, especially for legal drafters, and obtaining materials necessary to their work should therefore be given the highest priority. Further, despite initial Portuguese-Mozambican efforts in the legislative drafting area, this field is sufficiently important and the needs so great that A.I.D. should make it the first priority for legal reform assistance.

As a point of departure, the Consultant recommends that USAID assist the Government of Mozambique with funds for a seminar for the Mozambican lawyers in which the need for legal drafting will be emphasized. As explained in Chapter I, USAID could contact the International Law Institute in Washington, D.C. regarding training in legislative drafting. The American Bar Association can supply further information on continuing legal education programs for Mozambican attorneys. Moreover, USAID can provide selected books and reference materials on legal writing from the U.S., Brazil, Portugal, and the United Kingdom. Another useful measure would be to train two Mozambican attorneys in legal drafting so they can become instructors for others. Finally, an elective course should be added at the Law School of the University Eduardo Mondlane in legal research and drafting to prepare staff for DIL.

Family Law Revision

The Consultant recommends as a second priority that the US Government provide a drafter of family law. Having reviewed the treatment of family law in the Constitution, the Consultant concurs with the Government of Mozambique that the family law of the country has to be changed to agree with the Constitution, as well as to serve the diverse population. In order to do this, the Consultant recommends that USAID provide a legal anthropologist to examine and analyze the intricacies of different ethnic groups of the country for possible inclusion into the family law systems. This is necessary because the traditional laws adhered to by the various ethnic groups often conflict with the family law of the Constitution if they have any regard for it at all.

It should be recalled here that the framers of the first Constitution of Mozambique wanted to establish a unitary legal system rather than to accept the dualism which exists in the legal systems of other African countries. The new Constitution therefore requires one family law as opposed to allowing for traditional and modern systems of family law to operate parallel to each other. This does not require, however, that traditional principals

be completely excluded from the modern family law. Since one of the functions of DIL is to collect and research the decisions of the *Tribunales Comunitarios*, (in which traditional practices are taken into consideration) this information could be integrated with efforts to form a new family law. With the help of a legal anthropologist provided by USAID to the Center of African Studies, traditional and modern legal principles pertaining to family law may in many cases be reconciled.

Since the submission of the draft Legal Reform Action Plan, the MOJ has indicated that a revision of family law in Mozambique should await the development of a political consensus on the direction of reform. This does not change the fact that family law revision is a high priority, nor does it alter the terms of reference provided in Annex 3. This portion of the Action Plan would simply await a pronouncement by the MOJ that a family law consultancy can move ahead, and would incorporate into the results the guidance afforded by the political process.

Further Priorities

A.I.D. should consider what assistance it might provide the GRM in taking the further priority actions listed below:

A third priority for the USAID is to assist the Government of Mozambique in the drafting of a new Penal Code. Details for the work of a Consultant in this respect are given in Annex 3.

A fourth priority should be the preparation of a new Code of Civil Procedure. Terms of reference are provided in Annex 3. This is essential so that the society and business community have a place to resolve their disputes in a speedy and satisfactory manner.

A fifth priority will be to assist the Government in the drafting and implementation of commercial laws. These include laws governing commercial paper, sales, and insurance practices. A related need is to provide assistance in the drafting of new procedures for registers and notaries. Details for this consultancy are given in Annex 3.

The sixth priority will be to assist the Ministry of Justice and the National Commission on Environment by providing the services of a Consultant in drafting and implementing the Environmental Impact Statement requirements and another Consultant in drafting standards for the water quality law. This decision has been made after careful consultations with the institutions responsible for these matters. Terms of reference are provided in Annex 3.

ENDNOTES

1. Albie Sachs and Gita Honwana Welch, *Liberating the Law: Creating Populer Justice in Mozambique* (London and New Jersey: Zed Books), p. 65.
2. Ibid, p. 64.
3. Ibid, p. 65.
4. Ibid, p. 67.
5. Ibid, p.68.

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ANNEX 1

LIST OF INDIVIDUALS INTERVIEWED

Ossumane Ale Dauto, Minister of Justice

Aires Jose do Amaral, Advisor Ministry of Justice

Salvador Eugenio Bazima, Vice-Director of INAJ

Flina Majurana Gomes, Member of INAJ

Luisa Capelau, Policy Analyst USAID

Bosse Hammarstrom, Swedish Agency of Development

Jens Haarlow, DANIDA, Danish Embassy

Alirio de Oliveira Ramos, First Secretary Embassy of Brazil

Antonio Jose Rosado de Sousa, Cooperation Counsel, Embassy of Portugal

Jacomina de Regt, Senior Program Officer, World Bank

Antonio Salvador Siteo, Notary, Maputo

Jose M. Muaves, Director, Registries and Notaries of Maputo

Charles North, Deputy Program Officer, USAID, Maputo

Julius Scholothaner, USAID/ Maputo Director

Jack Muller USAID Maputo Director

Chris Dell, Deputy Chief of Mission U. S. Embassy, Maputo

Erasmus Nhavoto, Advisor Attorney General

Alfen Maubique, Community Tribunal Judge

Dommingo Maleuhifico, Community Tribunal Judge

Epitacio Xavier, Community Tribunal Judge

Rafael Sabastao, Clerk, 1st District Tribunal, Maputo

Luis Felipe Sacramento, Supreme Court Justice

Teodosio Vate, Vice-Dean, Faculty of Law

Azucena Duarte, Attorney Procoraduria

Angelina Victorina Ernesto Homo, Ministerio da Justicia, Chefe do Departamento de Administracao e Financas

Victor Eugenio Siueia, Director

Nina Berg, Resident Representative, NORAD

Abdul Carimo Mahomed Issa, Counsel, Ministry of Justice

Jose Norberto Carrilho, Vice-President do Tribunal Supremo

Isabel Casiniro, Historian, Center of African Studies, University Eduardo Mondlane

F. M. Gundo, Head of the International Relations Department, Ministry of Industry and Energy

Florence Luzia Bukali, Departamento de Desenvolvimento Social, Intituto de Desenvolvimento de Pesca de Pequena Escala (IDPPE)

Evaristo F. Baquete, Director Laboratorio Nacional de Higiene de Aguas e Alimentos, Departamento Higiene Ambiental

Henrique Carlos Machele, Attorney

Jorge Feliberto Manbui, Chief of the Legal Department, Mozambican Chamber of Commerce

Teresa Genta Fons, Senior Counsel, Africa Division, Legal Department, The World Bank

Juan Manual Martinez, President Tribunal Administrativo

Paulo Semaio Mhancala, Chief of the Legal Department, Ministry of Industry and Energy

Isaias de Abreu D. Muhate, Vice-Minister, Ministerio dos Transportes e Comunicacoes

Dr. Albeto Santos Nkutumula, Juiz-President Tribunal de Maputo

Ana Pessoa Pinto, Attorney, Ministry of Justice

Vibe Johnsen, Socio-Economist, Departamento de Desenvolvimento Social, Instituto de Desenvolvimento de Pesca de Pequena Escala (IDPPE)

Linai J. Nhatitima, Vice-Procurador-Geral da Republica

Shauna Mckenzei, Legal Consultant, UNDP, National Environmental Commission, Maputo

Moises Rafael Massinga, Secretario de Estado das Pescas

William P. Rougle, Fulbright Professor, Eduardo Mondlane University

Antonio Albano Silva, Lawyer Private Practice

Terezinha Luisa da Silva, Assistente Social, Ministerio da Sause, Maputo

Dr. Bengamin J. Tamele, Attorney, Private Practice

ANNEX 2

LIST OF SUBJECTS THAT A CONSULTANT IN FAMILY LAW SHOULD TAKE INTO ACCOUNT

Chapter 1. Sources and Applications of Family Law

- 1.1 Sources of Family law in Mozambique**
- 1.2 The Constitutions of 1975 and 1990**
- 1.3 Cultural Diversity and Family Law**

Chapter 2. State Interest vs. Constitutional Rights

- 2.1 Equality of the Laws between Men and Women According to the Constitution.**
- 2.2 Laws that Need to Be Modified, Civil Code, Commercial Code, Code of Civil Procedure and Criminal Code and others to be identified.**
- 2.3 Kinds of Marriages, the Formal Law and the Traditional Systems. Should the Traditional Marriages Be Recognized in a Single Law in Mozambique?**
- 2.4 State Interests in the Family, Equality of the laws.**

Chapter 3. Marriage Regulation - Requirements for Marriages

- 3.1 Monogamous Marriage**
- 3.2 Polygamous marriages**
- 3.3 Marriage Age**
- 3.4 Mental Condition**
- 3.5 Health**
- 3.6 Waiting Period**

Chapter 4. Marriage Regulation - Formal Requirements

- 4.1 Consent**
- 4.2 Solemnization, Formal and Traditional Systems**
- 4.3 Informal (Common Law) Marriage**
- 4.4 Marriage Registration**

Chapter 5. Effects of Non-Compliance with Marriage Regulation

- 5.1 The Constitution Does Not Permit "Illegitimate" Children, Changes to the Civil Code.**
- 5.2 Void and Voidable Marriages Defined**
- 5.3 Civil Code Presumption Regarding Validity of Marriage**
- 5.4 Conflicts of Laws May Arise if Traditional Forms of Marriage Are Accepted**

Chapter 6 Unmarried Cohabitation

- 6.1 Problems with Proof**
- 6.2 Importance for Probing Paternity**

Chapter 7. Variability of the Marriage Contract

- 7.1 Types of Marital Contracts**
- 7.2 Antenuptial Contracts - Validity and Subject Matter**
- 7.3 Agreements during marriage, Reconciliation Agreements**
- 7.4 Tax Consequences of Antenuptial Transfers**

Chapter 8. Spouse Rights and Obligations in the Ongoing Marriage

- 8.1 Family Support**
- 8.2 Husband - Chief of the Household, Is It Unconstitutional?**

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- 8.3 Actual Agency, Civil and Commercial Code
- 8.4 Authority to Purchase Necessaries
- 8.5 Medical Care
- 8.6 Property Rights during Marriage, Civil, Commercial, and Civil Procedure Codes
- 8.7 Community Property, Civil Code, Traditional Law
- 8.8 Survivor's Rights in Partner's Death, Formal vs. Traditional Custom
- 8.9 Conflicts of Laws Could Arise in Accepting Both Systems

Chapter 9. Issues in the Ongoing Marriage

- 9.1 The Women's Name after Marriage
- 9.2 Immunities
- 9.3 Intra-Family Crimes
- 9.4 Testimonial Privilege, Criminal Code and Criminal Procedure Code

Chapter 10 Equality of Spouses

- 10.1 Constitutional Principle, Sex Equality
- 10.2 Discriminatory Legislation in the Civil and Commercial Codes

Chapter 11. Parent and Child Relationship

- 11.1 Definition of Illegitimate Child in Civil Code, its Unconstitutionality
- 11.2 Are illegitimate Children Entitled to Inheritance?
- 11.3 Probing Paternity: Testimony, Blood Tests
- 11.4 Parental Acknowledgement, Obligation to Register Child

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Chapter 12 Adoption

- 12.1 Provisions in the Civil Code and Statuto de Assistencia Jurisdictional Aos Menores de Untramar**
- 12.2 Traditional Groups in Mozambique do not accept the concept of Adoption**
- 12.3 Legal Effects of Adoption, Civil Code**
- 12.4 Requirements for Adoption, Suitability of Possible Parents**
- 12.5 Revocation of Adoption**

Chapter 13. Parent and Child Relationship

- 13.1 Parent Authority and Custodial Obligations, Civil Code, Civil Procedure Code and Statuto de Assistencia Jurisdictional Aos Menores de Ultramar**
- 13.2 Emancipation**
- 13.3 Parent Immunity**
- 13.4 Parent Criminal Liability for Crimes to Children**
- 13.5 Compulsory Schooling and Parental Control**
- 13.6 Social Agencies Involvement and Minor Courts**
- 13.7 Medical Care**

Chapter 14. The Child Support Obligation

- 14.1 Father's Obligation According to the Civil Code**
- 14.2 Mother's Obligation According to the Constitution**
- 14.3 Factors in Awarding Child Support, Research in the Subject has been done by the Center of African Studies, "Women and the Law" Project in Alimony and Child Support, University Eduardo Mondlane, Maputo**
- 14.4 Modification of the Child Support Award, Research in Civil Section of the Courts should be done**

- 14.5 Duration of the Support Obligation, Research in Civil and Minor Sections of the Court in Maputo and other cities, if possible
- 14.6 Child Education, What Is the Limit, Secondary Education, Higher Education According to the Means of the Father and Mother

Chapter 15. Child Support Enforcement

- 15.1 Civil and Criminal Remedies, Some Research Has to Be Done in the Courts to Codified Principles
- 15.2 Opinion of the Attorney General

Chapter 16. Child Neglect and Abuse, Dependency, Termination of Parental Rights

- 16.1 Neglect, Dependency and Abuse, Civil Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code, Estaturo de Assistencia Jurisdiccional Aos Menres do Ultramar and the Study of the Practice of the Civil Section of the Courts.
- 16.2 How the Ethnic Groups Approach these Subject
- 16.3 Termination of Parental Rights
- 16.4 Criminal Prosecution
- 16.5 Possibility of Creating a Juvenile Courts
- 16.5 Participation of the Attorney General (Procurador), Social Institutions and Religious Institutions

Chapter 17. Child Custody on Divorce and lost of parents

- 17.1 Minor Children go with the mother, Civil Code
- 17.2 Is Anything in Mozambique as the "Child Best Interest", the Courts Practice and the Opinion of the Attorney General (Procurador).
- 17.3 Traditional Ethnic Groups
- 17.4 Visitation Rights in the Formal and Traditional Systems
- 17.5 Joint Custody in the Formal and Informal Systems

- 17.6 Reasons for Awarding Child Custody
- 17.7 Awarding Child Custody to Grandparents and Visitation Rights with Grandparents
- 17.8 Motives for Changing Custody
- 18.9 Parental Kidnapping

Chapter 19 Termination of Marital Status

- 19.1 Divorce, Civil Code, Commercial Code, Code of Civil Procedure vs. Traditional Marriages
- 19.2 Reasons for Divorce, Recent Law that Has Not Been Published in the Diario Oficial Deals with Non-fault Divorces
- 19.3 In Condonation an Analysis of the Community Tribunals will give good information
- 19.4 Collusion

Chapter 20. Separate Maintenance and Divorces from Bed and Board and Annulment

- 20.1 Limited Divorces, Civil Code vs. Traditional laws
- 20.2 Reasons for Annulment, Reasons Contained in the Civil Code Should Be Extended if Catholic Marriage is Again accepted
- 20.3 Conflicts of Laws than can arise

Chapter 21. Family Courts, Conciliation, Mediation, Arbitration and Right to Be y Represented by Counsel

- 21.1 Creating Sections in the Courts Dealing Only with Family Matters
- 21.2 The participation of the Office of the Attorney General (Procurador) in Family Litigation
- 21.3 The Right to Counsel, INAJ, the Bar Association, Appointment of Counsel by Judge
- 21.4 No need of Counsel in Simple Cases, Libraries, Dissemination of Information
- 21.5 Conciliation and Marriage Counsel, the Need for the Social Worker, the Formal and the Informal system, The Tribunals Comunitarios

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- 21.6 Divorce Jurisdiction - Residence Requirements and Recognition of Foreign Divorces
- 21.7 Service of Process
- 21.8 Annulment Jurisdiction and Limited Divorce Jurisdiction

Chapter 22. Economic Consequences of Divorce

- 22.1 Alimony
- 22.2 Who Owes Alimony to Whom and Why in an Egalitarian Society?
- 22.3 Relevancy of Fault
- 22.4 No-Fault
- 22.5 Husband's Ability to Pay
- 22.6 The Ex-Wife Remarriage in the Traditional System, under the Civil Code
- 22.7 Social Security

Chapter 23. Division of Property

- 23.1 Community Property vs. Traditional Marriages
- 23.2 Distribution of Property upon Divorce
- 23.3 Possible Conflict Problems

Chapter 24. Separation Agreements

- 24.1 Separation
- 24.2 Reconciliation
- 24.3 Relationship of Separation Agreement to the Divorce Decree

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ANNEX 3

TERMS OF REFERENCE

RECOMMENDED ASSISTANCE

In addition to the training assistance described in Chapter III of the report, it is recommended that USAID provide the following categories of technical assistance in the legal reform field, in order of priority:

1. Family Law Revision

Two consultants are recommended, as follows:

Legal Consultant on Family Law

The Consultant on Family Law should have a law degree, be skilled in legal writing, be fluent in Portuguese, have experience with traditional African legal systems, and have practiced or taught family law. Experience in drafting laws, serving as an administrator or judge of family law, and/or multiple legal systems is desirable.

The task of the Family Law Consultant will be to:

- a. Review Articles from the Civil Code, the Code of Civil Procedure, and the Code of Criminal Procedure to become familiar with all the articles.
- b. Review the material prepared on previous USAID studies on the issue of Family Law.
- c. Gather and review the research done by other institutions including the Center of African Studies and the Ministry of Health, on Social Services such as adoption and women's rights, looking specifically in the areas where traditional legal systems differ from the formal law.
- d. Assist the Working Group of DIL within the Ministry of Justice, in drafting the Family Code.

The time for accomplishing this task should be three months.

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Senior Advisor Expert in Legal Anthropological Research and Analysis

The Senior advisor should specialize in anthropological research and analysis of traditional customary practices related to family law. Someone from a university faculty or private group devoted to studies of traditional practices of tribal groups in the area of family law, inheritance, and individual rights would be suitable. Private sector experience would be useful but not essential.

The task should encompass the following:

- a. Evaluating resolution of disputes in lower courts from the anthropological perspective for the purpose of determining what tribal and customary practices presently operate in the society among defined tribal groups.
- b. Work in conjunction with a lawyer experienced in family law to suggest how the traditional and customary practices may be evaluated in a larger, more extended and systematic way to determine the extent of tribal and customary practices presently operative in the society;
- c. Conduct several seminars for the judicial community and interested government officials on the objectives of a proposed study of current practices.

The scope of the work is expected to extend about six months with a final report including a plan for gathering and evaluating current practices by Mozambicans for the purpose of evaluating the practices in drafting a new family law.

2. Drafting a New Penal Code

A consultancy is recommended in this area, as follows:

Legal Consultant on Criminal Law

The Consultant on Criminal Law should have a law degree, be skilled in legal writing, be fluent in Portuguese, have practiced, prosecuted, or taught criminal law. Experience in drafting laws or serving as a judge would be useful.

The task of the Consultant will be to:

- a. Review Articles from the Penal Code, the Code of Criminal Procedure, and relevant statutes, to become familiar with all the articles.
- b. Review previous studies on the penal system and criminal justice administration.
- c. Interview relevant personnel from the Ministry of Justice, the courts, and individuals and organizations involved in criminal defense.

- d. Assist the Working Group of DIL within the Ministry of Justice in drafting a new Penal Code.

The time for accomplishing this task should be four months.

3. Revision of Code of Civil Procedure

A single consultancy is recommended, as follows:

Senior Legal Consultant on Civil Procedure

The Consultant on the Law of Civil Procedure should have a law degree, have taught or practiced the subject, have experience with international aspects of the law, and be fluent in Portuguese. It is desirable that the Consultant have practiced the law, drafted statutes and/or served on bar committees concerned with statutory revision.

The task of the Consultant will be:

- a. To visit Mozambique first for at least five weeks to gather and research the current law;
- b. Provide the Mozambique Government a proposed draft of revisions;
- c. Return to Mozambique for at least three months to assist the Mozambique Government in revision of the law and conduct seminars on drafting law for the Mozambique Government.

4. Commercial Law Revision

Four consultancies are recommended in this area, as follows:

Senior Legal Consultant in the Law of Commercial Paper

The Consultant on the Law of Commercial Paper should have a law degree, have taught or practiced the subject, have experience with international aspects of the law, and be fluent in Portuguese. It is desirable that the Consultant have practiced the law, drafted statutes and/or served on bar committees concerned with statutory revision.

The task of the Consultant will be:

- a. To visit Mozambique first for at least three weeks to gather and research the current law.
- b. Provide the Mozambique Government a proposed draft of revisions.

- c. Return to Mozambique for at least two months to assist the Mozambique Government in revision of the law and conduct seminars on drafting law for the Mozambique Government.

Senior Legal Consultant in the Law of Sales

The Consultant on the law of sales should have a law degree, have taught or administered the subject, have experience with international aspects of the law, and be fluent in Portuguese. It is desirable that the Consultant have practiced the law, drafted statutes and/or served on bar committees concerned with statutory revision.

The task of the Consultant will be:

- a. To visit Mozambique first for at least three weeks to gather and research the current law.
- b. Provide the Mozambique Government a proposed draft of revisions.
- c. Return to Mozambique for at least two months to assist the Mozambique Government in revision of the law and conduct seminars on the law.

Senior Legal Consultant in the Law of Insurance

The Consultant on the law of sales should have a law degree, have taught or administered the subject, have experience with international aspects of the law, and be fluent in Portuguese. It is desirable that the Consultant have practiced the law, drafted statutes and/or served on bar committees concerned with statutory revision, and/or be familiar with the current utilization of computer record keeping in the area of the law.

The task of the Consultant will be:

- a. To visit Mozambique first for at least three weeks to gather and research the current law.
- b. Provide the Mozambique Government a proposed draft of revisions.
- c. Return to Mozambique for at least two months to assist the Mozambique Government in revision of the law and conduct seminars on the law.

Senior Legal Advisors for Revision of Notary and Registration Statutes and Administration.

Recommended are two senior Consultants with experience in court administration including selection and administration of procedures and practices for registrars and notaries. Direct administrative experience is essential for the first Consultant with

primary experience in administration. Experience in drafting rules and procedures for court administration is essential for the second Consultant.

The task would encompass the following:

- a. Advising on the revision of the Codes for registrars and notaries to correspond to current court practices and public service requirements;
- b. Investigating current court, notary practice and registration procedures to evaluate the current service to the public and support of the courts;
- c. Advising new procedures and practices including current technology, which standards could be adopted and how the such changes to the law could be effected.

The effort should take about two months for each of two consultants.

5. Environmental Law Revision

Two consultancies are recommended in this area, as follows:

Senior Technical Advisor Expert in Environmental Planning and Management (EIA)

The senior technical advisor should be a specialist in environmental impact assessment and environmental planning including preparation of large scale EIAs, small scale and environmental screening techniques. A university faculty member of environmental studies or a governmental planning unit would be suitable. Private sector experience would be useful but not essential.

The task should encompass the following:

- a. Evaluating available information on the nation's environment. The information is contained in the National Water Map and other national and international studies, satellite evaluations maintained by survey groups, and local administrative experience;
- b. Advising appropriate government officials on how EIA would benefit the nation, suggesting statutory provisions requiring an EIA for projects above an appropriate minimum scale and effect (this portion of the task should be done in conjunction with an environmental lawyer) - the statutory provisions usually include review and decision by a government body of EIAs prepared and submitted by the activity proposing the work, and advising select government officials on how to conduct an effective EIA;
- c. Advising on practices and procedures to gather and evaluate essential information to make informed EIA decisions; and

- d. Conducting several seminars to wider audiences of interested parties within the nation, to provide direction to activities that would be required to prepare and present EIAs for approval.

The scope of the work is expected to extend about three months with a final report.

Senior Technical Advisor in Water Standards and Quality

The Senior technical Advisor on water standards and water quality should have experience in setting up and managing a government water standards and quality control program including: experience with standard setting, licensing, enforcement and field operations, and supervision and teaching of staff. Work experience in pollution control and natural resource management in agricultural and coastal areas including estuaries is essential. Experience in fisheries, forestry, and soil erosion is desirable.

The Consultant, as a senior technical advisor, will assist the National Commission on Environment staff by instructing them and environmental groups capable of carrying out government laws and policy on how to preserve the quality of water for personal use, agriculture and fisheries.

The task should encompass the following:

- a. Suggesting statutory provisions for achieving the goal of minimum water standards and quality;
- b. Proposing statutory provisions suitable for the current state of affairs in Mozambique;
- c. Instructing individuals selected to carry out government policy and regulations as proposed in this area;
- d. Providing a detailed plan for obtaining information required for informed decisions including prior studies, water flow and water quality samples, surveys of encroachment of salinity, soil analyses, fertilizer and pesticides affects on health, etc.;
- e. Advising on the establishment and maintenance of a government information center and reference library serving as reference for water quality standards criteria. Such library would include the results of international research on the affects of natural and pollutant materials in water; and
- f. Advising on further programs to assist the establishment and operation of an effective national water program.

The term for such consultancy would be about three months in country with a report encompassing the major areas of statutory basis, instruction and establishment of an administrative group with a reference library, and planning proposals.

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ANNEX 4

FOOD AND HEALTH LAWS

LEGISLACAO SANITARIA PUBLICADA APOS A INDE ENENCIA NACIONAL

1. **Cadereta de control de inspescoes sanitarial, Portaria 11/78, 14 Janeiro, B.R. 6**
2. **Obregatoriedade de obtenscao e porte do boletim de sanidade, Decreto Lei 5/80, 22 Outubro, B.R. 42**
3. **Trabalhadores dos diferentes ramos de actividades que devem ser portadores do boetim de sanidade. Despacho, 26 Novembro 1980, B.R. 4**
4. **Emissao e revalidascao do boletim de sanidade, D. Ministerial 73/82, 22 Setembro, B.R. 7**
5. **Crimes contra a Saude Publica no ambito de higiene alimentar, Lei 8/82, 23 Junho, B.R. 40**
6. **Regulamento sobre os requisitos higienico-sanitarios dos estabelecimentos alimentares, Diploma Ministerial 51/84, 3 Outubro, B.R. 40**
7. **Alimentos importados, Diploma Ministerial 80/87, 3 Julho, B.R. 26.**
8. **Aditivos Alimentares, Diploma Ministerial 100/87, 23 Setembro, B.R. 38**
9. **Importacao, registo, transporte, producao e comercializacao de PESTICIDAS, Diploma Ministerial 88/87, 30 Setembro, B.R. 39.**

ANNEX 5

LIST OF LAWS REVIEWED IN THE BUSINESS AND COMMERCIAL SECTOR

Law concerning State Enterprises, Lei No. 13/91 Boletim da Republica, December 31, 1991.

Law concerning the re-tauration Private Enterprise, Lei No. 15/91, Boletim da Republica, August 3, 1991.

Direct Foreign Investment, Lei No. 4/84, Boletim da Republica, August 18, 1984.

Regulations on Directo Foreign Investment, Decree No. 8/87, Boletim da Republica, January 30, 1987.

Diploma concerning the Registration of the Importer, No. 21/91, Boletim da Republica March 6, 1991.

The Mozambican Bank, Lei No. 1/92, Boletim da Republica, January 3, 1992.

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**ANNEX 6
PRELIMINARY LISTING OF STATUTORY CHANGES REQUIRED
BY THE NEW CONSTITUTION OF MOZAMBIQUE**

The Consultant conducted a review of the codes, laws and regulations of Mozambique from the point of view of their constitutionality. The list can serve as a point of departure for a more in-depth inquiry into the constitutionality of Mozambican statutes.

This listing also emphasizes the importance of assessing the amount of work and setting guidelines and priorities to implement the articles of the Constitution. Since the country has scant resources in terms of capital and trained personnel, organization plays a critical role in enabling the MOJ to maximize resources. The MOJ should make a periodic review of the list of laws that have been drafted and identify those that need to be drafted because at present, the Ministry does not have adequate records of the laws that have been changed. Since codes are not published regularly, it is difficult for the public to know how the laws are modified, changed or repealed.

As a result of her review, the Consultant noted 51 Articles which are in greatest need of reform. These articles are listed below (Table 1):

<u>Article</u>	<u>Needs</u>	<u>Subject</u>
3 (2)	(New law needed)	1. Territorial waters fixed by Law.
4 (3)	(Work done by World Bank)	2. Administrative structure & power to decide on policy and administrative organization.
9 (2)	(New law needed)	3. Religious activities subject to Law.
29	(New law needed)	4. Conditions under which naturalized citizens may exercise public functions or private functions of public interest.
32 (4)	(No new law needed)	5. Formation/structure/operation of political parties.
35	(New law needed)	6. Goods and services within public domain.
47	(Should be revised)	7. Land use Law.
50	(Should be revised)	8. Taxation.

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<u>Article</u>	<u>Needs</u>	<u>Subject</u>
54	(No new law needed)	9. Delivery of medical and health care.
55	(Priority need for new law)	10. Family Law and marriage.
69	(New law needed)	11. Law punishing all discriminatory acts.
74 (4)	(No new law needed)	12. Regulation of freedom of speech and expression.
75	(New law needed)	13. Freedom of assembly within terms of the Law.
76	(New law needed)	14. Social Organizations Law.
79	(New law needed)	15. Copyright Law.
84	(New law needed)	16. Military Service Law.
85 (2)	(New law needed)	17. Sanctions for acts against the Constitution.
86 (2)	(New law needed)	18. Expropriation Law.
87	(No new law needed)	19. Inheritance Law.
83	(No new law needed)	20. Employment dismissal Law.
90	(No new law needed)	21. Trade Union Law.
91 (1) (2)	(Revision needed)	22. Law re right to strike.
94	(No new law needed)	23. Right to health care within Law.
97	(New law needed)	24. State liability for illegal acts of agents.
100	(No new law needed)	25. Legal aid provisions.
101	(New law needed with new Code of Civil Procedure)	26. Preventive imprisonment.
102	(New law needed with new Code of Civil Procedure)	27. Writ of Civil Habeas Civil Corpus.
104	(New law needed)	28. Privacy of correspondence.

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<u>Article</u>	<u>Needs</u>	<u>Subject</u>
105 (2)	(No new law needed)	29. Law re Supreme Council for Mass Communication.
106 (3)	(New law needed)	30. Law re rules for states of war/siege/emergency.
107 (4)	(New law needed)	31. Electoral Law.
112 (2)	(No new law needed)	32. Law re Public Administration.
114 (4)	(Consolidation needed)	33. Law re Composition/powers/operation of Provincial Governments.
115 (2)	(New law needed)	34. Law re provincial electoral bodies.
120 (j)	(New law needed)	35. Law re titles, awards distributions.
122 (d)	(New law needed)	36. Appointment of military officers in terms established by Law.
129	(New law needed)	37. Permanent incapacity of the President.
146	(New law needed)	38. Qualification or resignation of Deputies.
147 (3)	(New law needed)	39. Law re standing Commission of Assembly.
151	(No new law needed)	40. Council of Ministers account to President/Assembly as provided by Law.
154 (1)	(No new law needed)	41. Law conferring power to Prime Minister.
160	(New law needed)	42. Law re National Defense and Security Council.
170 (5)/172	(No new law needed)	43. Supreme Court Law.
174	(No new law needed)	44. Administrative Court Law.
175	(No new law needed)	45. Law re other Courts.
177	(New law needed)	46. Law re Office of Solicitor General and Supreme Council of Public Prosecutor.

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<u>Article</u>	<u>Needs</u>	<u>Subject</u>
184	(New law needed)	47. Constitutional Council Law.
190	(New law needed)	48. Local State office Law.
191	(New law needed)	49. Local State Elected Bodies Law.
192 (3)	(New law needed)	50. Incompatibilities.
195	(New law needed)	51. National Anthem.

The Consultant based this analysis in part on the work done previously by Anne Williams, Technical Analysis, Legal Systems AFR/ONI. Draft laws were not provided. Therefore, some new laws might have been drafted that the Consultant was not aware of.