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LEGAL SECTOR SURVEY REPORT

Prepared by:

John Oleson

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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 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

USG

**Chris Dell
Charge de Affaires
US Embassy**

**Dean Pittman
Political Officer
US Embassy**

**Julius Schlotthouer
Director of USAID**

**John Miller
Deputy Director of USAID**

**Charles North
Deputy Program Officer
USAID**

**Luisa Capelao
Policy Analyst
USAID**

**Gerald Mc Laughlin
Public Affairs Officer
US Embassy**

**Edward Kemp
Assistant Public Affairs Officer**

MOJ

**Dr. O. Aly Dauto
Minister of Justice**

**Aires du Amaral
Director of the Technical Council**

**Ana Pessoa
Assistant Director of the
Department of Research & Legislation**

**Abdul Carimo Mohamed Issá
Juridicial Advisor and
Director of INAJ**

**Salvador Eugenio Vazima
Vice Director of INAJ**

**Victor Eugénio Sineia
Director
National Directory of Registries &
National Services**

**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
Procurador for Maputo (Criminal Section)**

**Ocucena Xavier Duarte
Procurador for Maputo (Civil Section)**

**Graciela Xavier
Acting Secretary General**

University

**Teodosio de Uate
Vice Dean of Faculty of Law**

**Vasco Branco Guimara
Visiting Law Professor from Portugal**

Other Donors

**Teresa Genta-Fons
Senior Counsel
Africa Division, World Bank**

**Roberto Chavez
Country Officer, Mozambique
World Bank/W**

**Jacomina de Regt
Senior Program Officer
World Bank, Mozambique**

**Bosse Hammarstrom
Embassy of Sweden in Mozambique**

**Antonio Jose Rosado de Sousa
Counselor for Cooperation
Embassy of Portugal**

**Aliro De Oliveira Ramos
First Secretary
Brazilian Embassy**

**Nina Berg
Norwegian Cooperative Development
Agency (NORAD)
Mozambique**

Others

**William O. Rogle
Fulbright Professor
Eduardo Mondlane University**

**Beverly M. Carl (by telephone)
Consultant to IBRD
Professor Emeritus of Law**

**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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