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**LEGAL REFORM ACTION PLAN**

**Prepared by:**

**Beatriz de Greiff Stack**

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## **Preface**

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

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

## Chapter I

### INTRODUCTION

#### *Remarks*

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

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

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

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

#### *Terms of Reference--Legal Reform Action Plan*

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

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

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

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

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

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

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

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

### ***Methodology***

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

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

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

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

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

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

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

## ***The Process of Making Laws***

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

### **Ministry of Justice Center of Investigation and Research.**

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

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

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

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

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

(d) to produce studies on Comparative Law;

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

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

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

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

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

### ***Deficiencies of DIL***

#### **The Need for Greater Legal Resources.**

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

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

#### **Participation of other Donors.**

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

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

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

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

***How USAID Could Assist in Improving Legal Drafting***

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

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

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

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

Legal drafting courses should include the following:

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

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

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

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

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

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

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

## Chapter II

### ANALYSIS OF SELECTED LAWS OF MOZAMBIQUE AND SUGGESTED REVISIONS

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

#### CODES INHERITED FROM THE PORTUGUESE

##### *Family Law*

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

##### Articles from the Civil Code that Appear to be Unconstitutional.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Drafting a Family Code for Mozambique.

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

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

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

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

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

(2) Inheritance between the Matrilineal and Patrilineal groups;

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

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

### Encouraging Mozambican Research Institutions to Broaden and Deepen Family Research.

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

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

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

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

### ***The Code of Civil Procedure***

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

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

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

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

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

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

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

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

### Drafting a New Code of Civil Procedure.

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

### *Commercial Law*

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

The following subjects of the legislation have to be reviewed:

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

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

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

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

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

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

***Registration Codes (Codigos de Registro o Notariado)***

The Consultant reviewed the following Codes:

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

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

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

Shortcomings of the Registration Laws are as follows:

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

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

The process can be improved by:

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

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

### ***Criminal Procedure***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ***The Penal Code***

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

## **POST-INDEPENDENCE LAWS**

### ***Law Governing the Attorney General and Solicitor's Office***

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

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

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

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

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

Apparently, the duties of the Solicitor General and the Attorney General are now performed by the same person. The Attorney General of Mozambique exercises control over the legal affairs of the national, provincial and local governments and their various administrations. The Attorney General represents the state's interests. He also takes legal action to protect state property and prosecutes crimes against the state. He appears in person before the Supreme Court. The Attorney General's Prosecutors oversee the investigation of criminal cases. The investigations conducted by the police department are supervised by the Attorney General's Prosecutors.

The Minister of Justice is the chief legal advisor of the Government. He provides legal advice to the administration, and therefore he can establish consistent and uniform state legal policy. As chief legal officer, the Minister of Justice offers preventive legal

advice to persons designated by the law. He also insures the legality of state government action.

The Public Prosecutor's office ensures the legal defence of minors and absent or incapacitated persons. At the present time, the President of Mozambique appoints this official, and the President can remove him at will. This is a questionable practice because an Attorney General should be independent of direct political pressure. The Attorney General must be barred from setting up private practice. This diminishes the possibility of conflicts of interest. However, he must also receive adequate compensation according to the law.

The above information was gleaned from interviews and meetings with the Attorney General's Office. In addition, the consultant reviewed pertinent procedural codes and legislation in order to get an overall picture of the different responsibilities faced by the Mozambican Attorney General's Office. At the time of the consultancy, the office of the Attorney General informed the consultant that an Organic Law for the Attorney General's office was in preparation. However, as the draft was not provided, it is not possible to comment on the laws adequacy or need for revision. A law of this kind is clearly needed.

It is recommended that the USAID assist the government of Mozambique in drafting the Organic Law governing the functions of the Attorney General's Office, which will include the head of the Procuracy (Criminal Investigations) and policing of government. Annex 3 contains details of the terms of reference for a consultant in this area.

### ***The Environmental Laws***

#### **1. The National Commission of the Environment.**

On 2 June 1992 the President of Mozambique, by Presidential Decree, created the National Commission of the Environment (Comissao Nacional do Meio Ambiente, Decree Number 2/92). The new Commission is subordinate to the Counsel of Ministers (Conselho de Ministros), but enjoys administrative autonomy. The Headquarters of the Commission is in the city of Maputo; however, the Decree provides for the creation of regional centers in other parts of the country.

The objectives of the Commission are the coordination, study and promotion of activities in the area of environment. The Commission also determines the policies to be followed, performs studies of the ecosystems and gives opinions concerning the impact on the environment of important projects, establishing a systematic control of Environmental Impact Statements.

The Minister of Mineral Resources (Ministro dos Recursos Minerais) is the President of the Commission; its Vice-President is the Minister of Construction and Water (Ministro da Construcão e Aguas). The Commission also has the responsibility for public education on environmental matters and the coordination of the technical support of International Organizations. The Commission has a President that oversees the Departments of Research

(Pesquisa), Planning (Planificacao), Management (Gestao Ambiental), Education and Administration. The Commission President also coordinates the activities of the Permanent Consulting Group (Grupo Consultivo Permanente), and the activities of the several Departments and Provincial and regional delegations for the discussion of laws, and regulations concerning the environment. The preparatory work of the Commission was carried out by the National Institute of Physical Planning (Instituto Nacional de Planeamiento Fisico), and the Presidential Decree transfers the personnel and facilities to the newly created Commission.

At the present time, the Commission has four lawyers working on, among other things, the preparation of a new Environmental Law for Mozambique. They are assisted by a Consultant from UNDP. The group is quite capable and dynamic. They are preparing a Group Discussion concerning the project law. (The Meeting started July 3). This is encouraging because many government programs have failed as a result of half hearted enforcement of the rules.

Members of the Commission have requested assistance in the preparation of guidelines for the Environmental Impact Assessment (EIA). The EIA is a planning instrument which assess the possible impact of a proposed project on the environment before any decision is taken to implement the project. It is a formal procedure to identify, analyze, interpret, predict, and communicate the possible environmental effects resulting from a project which, when weighed against the benefits resulting from such proposed or alternative actions, will provide guidance in reaching decisions. Early attention to these matters can avoid the serious potential threats to health and irreversible damage to the ecosystem. The disastrous health situation in Eastern Europe, which resulted from disregard of the possible ecological effects of development can, in this sense, forewarn us.

## 2. Possible Support by A.I.D.

USAID could lend support by providing the Government of Mozambique copies of United States Federal Laws concerning the environment, for use as a reference. The British Library in Maputo is presently the only Library in the country that contains technical and legal books. The U.S. Environmental Protection Agency (EPA) has developed a considerable number of books and publications on environmental issues that could be very valuable for Mozambique. In addition, microfiche and other advances permit sharing publications at relatively low cost. This Agency also has an International Department that is advising foreign countries.

The Consultant recommends that USAID provide the Commission with a specialized consultant on this issue. Since the United States was the first country to require Environmental Impact Statements, the Corps of Engineers of the United States has the best technical expertise to share in this area. An expert is needed in the formulation of the Environmental Impact Statement regulations and legal review of the same. Terms of reference for this consultancy are given in Annex 3. Other legal consultants in the future can also advise the Commission in those areas of the environmental law where the United States has the lead, such as: the Protection of Coastal Zones, Erosion Protection, National

Parks Management, and the participation of non-profit organizations in the protection of the environment.

### 3. Natural Resources Laws.

During the visit to Maputo, the Consultant collected the laws and regulations that directly or indirectly refer to natural resources, to find gaps in these laws and areas where there is need for greater implementation. Areas in need of revision include the following:

#### (a) The Water Law Number 16/1991 of 3 August

This law defines the water resources of the country which are now in the public domain, the water administration, the need for a survey of all the waters of the country, the general use of the resource and the priorities for its use. The hydrological resources of the country are now under the control of this new Law. It establishes a new policy of water administration, contemplates the creation of a system of protection, conservation, control, and utilization of the resource. The private use of water is recognized and permits and concessions are granted.

The management of the water resource is the responsibility of the Ministry of Construction and Waters. Officials from the Ministry desire a Consultant help to set up a Water Administration Unit within the Ministry. Hydraulic works are subject to Environmental Impact Statements. The Law creates a National Inventory, a Water Recording system, and regional administration units. The Water Administration unit will be responsible for issuing permits and water concessions, and for imposing sanctions on polluters. This law establishes priorities for use. Water for personal consumption is the first priority. By way of regulation, zones of protection will be created. In such zones the construction of buildings will be restricted. Officials from the Ministry of Construction and Water wish to modify the old Construction Code, stating that it is no longer suitable for the needs of the country.

Article 46 of the Water Law of 1991 deals with the subject of irrigation. It is directed at taking the proper and economically efficient measures to minimize the loss of water due to infiltration, evaporation and water escape. This article does not take into account:

- the very serious problem of salinization and how to deal with this problem. Mozambique has a long coast, and fresh water has to be protected from the encroachment of sea water.

- the fact that private investors do not want to invest in long-term and expensive measures of conservation because the land does not belong to them in Mozambique, but rather to the State;

- the very old Tax Code of the country which does not give incentives to private investors in irrigation projects; and,

-- even though the Article allows the regulations, the principle of relying on the investors to do the improvements cannot be changed by way of regulation.

**(b) Other Government Institutions dealing with Water Related Issues**

The Ministries of Agriculture, Foreign Relations, Cooperation, Industry and Energy, Mineral Resources, State Administration and Health act in coordination in the management of the water resource. The Consultant visited other government institutions that deal with water resources, namely the National Program for Rural Water (PRONAR) of the National Administration of Water (Direcao Nacional do Aguas). This institution promotes and coordinates the construction and rehabilitation of wells for the rural population of the country. It has a central office in Maputo. At the provincial level, the Rural Provincial Service administers the service (Servicio Estaleiro Provincial de Agua Rural, EPAR's).

PRONAR's main purpose is to improve the health conditions of the rural population by providing clean water 500 meters away from huts. The goal is to supply water to 35 per cent of the rural population by the year 1995. PRONAR works together with two other institutions, CEOMOC, which drills wells, and HIDROMOC, which provides the equipment systems for water purification. This institution has been supported by ten donors, utilizing a total of US \$18,609,300. PRONAR coordinates its work with the Ministry of Health in teaching how the beneficiaries may reduce exposure to water-borne diseases.

After reviewing the documents provided by officials of this institution, the Consultant sees the beginning of the standardization of the industry in the country. Officials from the Ministry of Industry and Energy also express a desire for technical and legal assistance in the area of standardization. Another preoccupation of the officials from the Ministry of Construction and Water is to review the Planning Code for the cities. The Consultant does not advise USAID to provide advice in this area because the World Bank is already advising on these matters.

**(c) Ministry of Health, Department of Environmental Health**

Controlling the water quality of the country is the responsibility the Ministry of Health (Article 56 of the Water Law of 1991). Under the Minister of Health is the National Health Center (Direcao Nacional do Saude), which has a Department of Environmental Health. The Section of Water Hygiene and Food, Environmental Hygiene, Occupational and International Health report to the Department of Environmental Health.

The Consultant visited the National Hygiene Laboratory for Water and Food. The laboratory personnel work hard, but they need laboratory equipment to be able to control pesticides in food and water and to test the chemicals in food and water as well. The officials of the laboratory expressed their interest in working with American health institutions on investigations of conditions in Maputo and Beira. The National Hygiene Laboratory also services private individuals and institutions. They expressed the desire to make the institution more profitable because the country did not have the resources to properly equip the laboratory.

The Department of Environmental Health has made a recompilation of Health Laws which are listed in Annex 4 of this report. The Department does not have a lawyer, making it difficult to propose changes to the laws and regulations. For example, the Regulation on Pesticides, Diploma Ministerial No. 88/1987 of 30 of September, determines the quantity of the fines for violation of the regulation. These fines are now too low, the amounts need to be increased.

The Consultant advises that USAID provide the Ministry of Health with the Services of a Senior Technical Advisor in Water Standards. The terms of reference for a Consultant in this matter are attached to this report in Annex 3.

#### (d) Land Laws

In Mozambique, land is held in trust for the benefit of the people and belongs to the State. Farms cannot be privately owned. The Land Law No. 6/79 of 3 June, 1979 makes it clear that no private legal transactions in land are permitted. Land can neither be sold nor mortgaged. However, the Constitution permits the use and enjoyment of the land. This form of land title appears to be one of the principal barriers to economic development. However, Law No. 1/1986 concerning the Use of the Land fixes the use and enjoyment of the land up to a period of 50 years. This period can be renewed by the successors.

The Land Regulation, Decree No. 16/87, states that any person or corporation, national or foreign, has the right to have legal title over the use and enjoyment of land. The government entities that may authorize the use of the land are: the city councils, the provincial government, the Minister of Agriculture, the Minister of Planning and the Council of Ministers. The Council of Ministers decides requests concerning the right of use and enjoyment that exceed the jurisdiction of the Minister and Governors of the Provinces.

Pursuant to Article 12, the holder of title over the use and enjoyment of the land can mortgage the buildings. This Article creates a major inequality because the owners of buildings can have access to collateral. By contrast, the farmers do not have the right to mortgage land for farming activity. It is clear that providing farmers the right to mortgage land would promote agriculture. Following the same legal theory, there is the question as to whether farmers should be able to mortgage their cashew and other productive trees.

The situation of titles over the use and enjoyment of land in Mozambique is critical. Farmers do not usually register their land, although some of the families have been there for generations. At the present time, millions of farmers are refugees in foreign countries because of the war. Some day they will come back to look for the land they were forced to leave. The same situation occurs with the expatriates, who also want to claim the land. Another area of traditional law that deserves research concerns customary notions and practices of land tenure. It is the understanding of the Consultant that the Land Tenure Center of Wisconsin is cooperating with the government of Mozambique in the area of Recording of Deeds.

## ***The Laws of the Press***

The Law Number 18/91 of 10 August 1991 guarantees the liberty of expression and freedom of information of the press which is supported by the Constitution of 1990 in Article 74. This law covers in considerable detail the principles of dissemination of information as they apply to the public and private sectors and include graphics, radio, television, movies and any other written material directed towards dissemination. Newspaper ownership is limited to Mozambicans, though foreign capital is allowed in the formation of a private newspaper corporation to the extent of 20 per cent. The directors of such newspapers, however, must be Mozambicans.

The law defines who is a journalist and indicates his or her rights and duties. The liberty of the press includes access to information sources, protection and independence of secrecy of sources of information and the right to establish newspapers and other publications. The right of the people to have access to information is also protected by the law. Political parties with representation in the National Assembly are provided access for limited times to the radio and television.

Further, this law enumerates the aims of the press. These aims are : (a) the consolidation of national unity and the defense of the national interests; (b) the promotion of democracy and social welfare; (c) cultural, scientific, economic and social development geared to an increase in the level of social conscience, education, and culture of the citizens; (d) provision of popular access to facts, information and opinions; (e) education of the citizens; (f) interchange of ideas between the government and the citizens; and (f) promotion of a dialogue between the cultures of the world.

The right of response is provided in the law. If any person or institution believes that a publication has caused moral damage to its reputation, he (she) has the right to an answer. The publisher must write an article or retraction explaining that the prior information is incorrect. If the publisher does not comply with the requirements, the interested party has access to the courts. The law conforms to the Constitution; however, it provides for a criminal penal action for libel and slander, which is viewed as excessive because it has a detrimental effect on the rights of free press. In the United States, for example, libel and slander are subject to civil actions in tort. It will be important to expose the Mozambicans to issues of the constitutionality of freedom of expression.

The 1991 law also creates the Superior Counsel of Social Communication (Conselho Superior da Comunicacao Social). Membership of the Counsel consists of: two members nominated by the President of the Republic; four members elected by the Assembly; a member of the Superior Counsel of the Judiciary (Conselho Superior da Magistratura Judicial); three representatives from the press union; and a representative of the press. The members are elected for a period of five years. The purpose of the Counsel is to see that the law is observed.

## ***Labor Law***

The Labor Law (Lei No. 8/85 of 14 December 1985) is the umbrella law on the subject. Chapter I defines the scope of application of the law. The law applies to all employers including government corporations, companies with government and private participation, and the corresponding workers (nationals and foreigners) that reside in the country. The cooperatives are regulated by articles of incorporation and bylaws. Civil servants are not subject to the provisions of this law.

In Article 2, the Law authorizes the Secretary of Labor and the Secretary of State to issue regulations (Diplomas) in specific areas of the law. The law is quite advanced, prohibiting discriminatory practices and stating that "all citizens have the right to work, regardless of their ethnic origin, sex, religion, race, color, social position and public opinion". The Secretary of State in Coordination with the National Commission of Planning formulate the implementation policies to obtain the full utilization of the labor resource.

### **(1) Types of Contracts**

The labor relationship is created by contract that can be collective or single (Article 4). The Law defines the labor contract as "an agreement by which a person or a group of persons oblige themselves to perform an activity for another person or an employer and under his (her) direction receiving in exchange a reward" (Article 5). The labor contract must be in writing (Article 7). The duration of the labor contract can be for a definite or indefinite period of time (Article 9). The employee can be subject to a probationary period (Article 13). The law allows for the transfer of the employee (Article 17 to 21). In addition, it specifies when the contract can be suspended (Article 23).

The labor contract can terminate for the following reasons: (a) agreement between the parties; (b) unilateral withdrawal of one of the parties with adequate reason; (c) unilateral withdrawal of any of the parties with notice in advance; (d) judicial decision and lapse of time (Articles 24 to 32). The above-mentioned articles comply with Article 87 of the Constitution, which guarantees employment dismissal legislation.

Article 35 of the Labor Law authorizes the Collective Bargain Contract; however, it does not authorize specifically the right to strike as required by the Mozambican Constitution of 1990 in Article 91 (1) and (2). Article 37 permits the Secretary of State and Labor to establish regulations concerning the subject and form of collective bargaining by way of negotiation and conciliation.

The law establishes: the minimum age for employment - 18 years of age (Article 41); employment for occasional and seasonal workers (Article 46); the right to a certificate of good service (Article 35); training in the country and abroad; promotion (Article 119); particulars of workers' obligation and rights (Chapter IV); and work holidays. Article 59 also enumerates, in great detail, all the obligations of the workers in a very paternalistic manner. The law furthermore relates the kinds of disciplinary measures that employers can impose against employees. Examples of these measures are: fines consisting of 20 days of

salary, compulsory reform, public reprimand and loss of employment. In order for the employer to apply these reprimands, the corresponding union of workers has to be notified (Article 102).

Chapter XII guarantees the protection and the hygiene of the employees in the work place. Work inspectors and work centers are responsible for enforcement of government regulations. It is the responsibility of the employee to observe strictly the measures for his (her) protection. The Secretary of State and Labor and the Ministry of Health in cooperation with the labor unions, establish the regulations for each activity.

### **(2) Workman's Compensation**

The Law defines work accidents (Articles 140-142) and illnesses caused by the work environment (Article 143). The worker who has an accident must notify the employer. The employer, with the worker's union, has the obligation to register the accident. The worker that has an accident or illness related to work is entitled to the following: (a) the employer must send the worker for immediate medical attention; (b) the worker is entitled to medicine and orthopedic instruments; (c) if the worker is at a distant place from a hospital or health center, he (she) is entitled to be transported for medical assistance with a family member; (d) the worker receives an advance of one month's of salary depending on his (her) health condition, and (e) the employer is responsible for the expenses of the worker's funeral.

The employer must make an effort to find suitable work for the employee who has suffered an accident or work related illness (Article 148). An evaluation of the extent of the injury must be made (the law is not very clear as to when a medical exam should be conducted, sometimes more than a medical exam is needed). The Ministry of Health is preparing regulations instructing the industries to have primary care assistance for accidents and illnesses of employees.

### **(3) Statute of Limitations**

If the worker is entitled to compensation and does not exercise his (her) right within one year of the time when the accident occurred, the right is lost. If the employee who suffers an accident does not comply with medical instructions, he loses his right of compensation.

### **(4) Social Security**

In Article 146, the law establishes a social security system for the labor force in the event of illness, accident, maternity, disability, old age, and the well being of the family of the worker. The Labor Laws of Mozambique are quite good. They should, however, be extended, in compliance with Article 91 of the Constitution, to include the right to strike. Importantly, neither the social security nor the labor laws have implementing regulations.

The law should also provide for the protection of union leaders against encroachment from the employers for their union activities. The Government of Mozambique is assisted at the present time by the Government of Italy on labor law matters. A Consultant in this area is not recommended.

### Chapter III

#### PRIORITY ACTION RECOMMENDATIONS

##### *Developing Capacity for Legislative Drafting*

DIL understaffing, lack of resources such as legal texts, reference materials and professional legal drafters, limits considerably the ability of the institution to draft effective legislation. The creation of posts and incentives for legal staff, especially for legal drafters, and obtaining materials necessary to their work should therefore be given the highest priority. Further, despite initial Portuguese-Mozambican efforts in the legislative drafting area, this field is sufficiently important and the needs so great that A.I.D. should make it the first priority for legal reform assistance.

As a point of departure, the Consultant recommends that USAID assist the Government of Mozambique with funds for a seminar for the Mozambican lawyers in which the need for legal drafting will be emphasized. As explained in Chapter I, USAID could contact the International Law Institute in Washington, D.C. regarding training in legislative drafting. The American Bar Association can supply further information on continuing legal education programs for Mozambican attorneys. Moreover, USAID can provide selected books and reference materials on legal writing from the U.S., Brazil, Portugal, and the United Kingdom. Another useful measure would be to train two Mozambican attorneys in legal drafting so they can become instructors for others. Finally, an elective course should be added at the Law School of the University Eduardo Mondlane in legal research and drafting to prepare staff for DIL.

##### *Family Law Revision*

The Consultant recommends as a second priority that the US Government provide a drafter of family law. Having reviewed the treatment of family law in the Constitution, the Consultant concurs with the Government of Mozambique that the family law of the country has to be changed to agree with the Constitution, as well as to serve the diverse population. In order to do this, the Consultant recommends that USAID provide a legal anthropologist to examine and analyze the intricacies of different ethnic groups of the country for possible inclusion into the family law systems. This is necessary because the traditional laws adhered to by the various ethnic groups often conflict with the family law of the Constitution if they have any regard for it at all.

It should be recalled here that the framers of the first Constitution of Mozambique wanted to establish a unitary legal system rather than to accept the dualism which exists in the legal systems of other African countries. The new Constitution therefore requires one family law as opposed to allowing for traditional and modern systems of family law to operate parallel to each other. This does not require, however, that traditional principals

be completely excluded from the modern family law. Since one of the functions of DIL is to collect and research the decisions of the *Tribunales Comunitarios*, (in which traditional practices are taken into consideration) this information could be integrated with efforts to form a new family law. With the help of a legal anthropologist provided by USAID to the Center of African Studies, traditional and modern legal principles pertaining to family law may in many cases be reconciled.

Since the submission of the draft Legal Reform Action Plan, the MOJ has indicated that a revision of family law in Mozambique should await the development of a political consensus on the direction of reform. This does not change the fact that family law revision is a high priority, nor does it alter the terms of reference provided in Annex 3. This portion of the Action Plan would simply await a pronouncement by the MOJ that a family law consultancy can move ahead, and would incorporate into the results the guidance afforded by the political process.

#### ***Further Priorities***

A.I.D. should consider what assistance it might provide the GRM in taking the further priority actions listed below:

A third priority for the USAID is to assist the Government of Mozambique in the drafting of a new Penal Code. Details for the work of a Consultant in this respect are given in Annex 3.

A fourth priority should be the preparation of a new Code of Civil Procedure. Terms of reference are provided in Annex 3. This is essential so that the society and business community have a place to resolve their disputes in a speedy and satisfactory manner.

A fifth priority will be to assist the Government in the drafting and implementation of commercial laws. These include laws governing commercial paper, sales, and insurance practices. A related need is to provide assistance in the drafting of new procedures for registers and notaries. Details for this consultancy are given in Annex 3.

The sixth priority will be to assist the Ministry of Justice and the National Commission on Environment by providing the services of a Consultant in drafting and implementing the Environmental Impact Statement requirements and another Consultant in drafting standards for the water quality law. This decision has been made after careful consultations with the institutions responsible for these matters. Terms of reference are provided in Annex 3.

## ENDNOTES

1. Albie Sachs and Gita Honwana Welch, *Liberating the Law: Creating Populer Justice in Mozambique* (London and New Jersey: Zed Books), p. 65.
2. Ibid, p. 64.
3. Ibid, p. 65.
4. Ibid, p. 67.
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**ANNEX 1**

**LIST OF INDIVIDUALS INTERVIEWED**

**Ossumane Ale Dauto, Minister of Justice**

**Aires Jose do Amaral, Advisor Ministry of Justice**

**Salvador Eugenio Bazima, Vice-Director of INAJ**

**Flina Majurana Gomes, Member of INAJ**

**Luisa Capelau, Policy Analyst USAID**

**Bosse Hammarstrom, Swedish Agency of Development**

**Jens Haarlow, DANIDA, Danish Embassy**

**Alirio de Oliveira Ramos, First Secretary Embassy of Brazil**

**Antonio Jose Rosado de Sousa, Cooperation Counsel, Embassy of Portugal**

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

**Antonio Salvador Siteo, Notary, Maputo**

**Jose M. Muaves, Director, Registries and Notaries of Maputo**

**Charles North, Deputy Program Officer, USAID, Maputo**

**Julius Scholothaner, USAID/ Maputo Director**

**Jack Muller USAID Maputo Director**

**Chris Dell, Deputy Chief of Mission U. S. Embassy, Maputo**

**Erasmus Nhavoto, Advisor Attorney General**

**Alfen Maubique, Community Tribunal Judge**

**Dommingo Maleuhifico, Community Tribunal Judge**

**Epitacio Xavier, Community Tribunal Judge**

**Rafael Sabastao, Clerk, 1st District Tribunal, Maputo**

**Luis Felipe Sacramento, Supreme Court Justice**

**Teodosio Vate, Vice-Dean, Faculty of Law**

**Azucena Duarte, Attorney Procoraduria**

**Angelina Victorina Ernesto Homo, Ministerio da Justicia, Chefe do Departamento de Administracao e Financas**

**Victor Eugenio Siueia, Director**

**Nina Berg, Resident Representative, NORAD**

**Abdul Carimo Mahomed Issa, Counsel, Ministry of Justice**

**Jose Norberto Carrilho, Vice-President do Tribunal Supremo**

**Isabel Casimiro, Historian, Center of African Studies, University Eduardo Mondlane**

**F. M. Gundo, Head of the International Relations Department, Ministry of Industry and Energy**

**Florence Luzia Bukali, Departamento de Desenvolvimento Social, Intituto de Desenvolvimento de Pesca de Pequena Escala (IDPPE)**

**Evaristo F. Baquete, Director Laboratorio Nacional de Higiene de Aguas e Alimentos, Departamento Higiene Ambiental**

**Henrique Carlos Machele, Attorney**

**Jorge Feliberto Manbui, Chief of the Legal Department, Mozambican Chamber of Commerce**

**Teresa Genta Fons, Senior Counsel, Africa Division, Legal Department, The World Bank**

**Juan Manual Martinez, President Tribunal Administrativo**

**Paulo Semaio Mhancala, Chief of the Legal Department, Ministry of Industry and Energy**

**Isaias de Abreu D. Muhate, Vice-Minister, Ministerio dos Transportes e Comunicacoes**

**Dr. Albeto Santos Nkutumula, Juiz-President Tribunal de Maputo**

**Ana Pessoa Pinto, Attorney, Ministry of Justice**

**Vibe Johnsen, Socio-Economist, Departamento de Desenvolvimento Social, Instituto de Desenvolvimento de Pesca de Pequena Escala (IDPPE)**

**Linai J. Nhatitima, Vice-Procurador-Geral da Republica**

**Shauna Mckenzei, Legal Consultant, UNDP, National Environmental Commission, Maputo**

**Moises Rafael Massinga, Secretario de Estado das Pescas**

**William P. Rougle, Fulbright Professor, Eduardo Mondlane University**

**Antonio Albano Silva, Lawyer Private Practice**

**Terezinha Luisa da Silva, Assistente Social, Ministerio da Sause, Maputo**

**Dr. Bengamin J. Tamele, Attorney, Private Practice**

## **ANNEX 2**

### **LIST OF SUBJECTS THAT A CONSULTANT IN FAMILY LAW SHOULD TAKE INTO ACCOUNT**

#### **Chapter 1. Sources and Applications of Family Law**

- 1.1 Sources of Family law in Mozambique**
- 1.2 The Constitutions of 1975 and 1990**
- 1.3 Cultural Diversity and Family Law**

#### **Chapter 2. State Interest vs. Constitutional Rights**

- 2.1 Equality of the Laws between Men and Women According to the Constitution.**
- 2.2 Laws that Need to Be Modified, Civil Code, Commercial Code, Code of Civil Procedure and Criminal Code and others to be identified.**
- 2.3 Kinds of Marriages, the Formal Law and the Traditional Systems. Should the Traditional Marriages Be Recognized in a Single Law in Mozambique?**
- 2.4 State Interests in the Family, Equality of the laws.**

#### **Chapter 3. Marriage Regulation - Requirements for Marriages**

- 3.1 Monogamous Marriage**
- 3.2 Polygamous marriages**
- 3.3 Marriage Age**
- 3.4 Mental Condition**
- 3.5 Health**
- 3.6 Waiting Period**

**Chapter 4. Marriage Regulation - Formal Requirements**

- 4.1 Consent**
- 4.2 Solemnization, Formal and Traditional Systems**
- 4.3 Informal (Common Law) Marriage**
- 4.4 Marriage Registration**

**Chapter 5. Effects of Non-Compliance with Marriage Regulation**

- 5.1 The Constitution Does Not Permit "Illegitimate" Children, Changes to the Civil Code.**
- 5.2 Void and Voidable Marriages Defined**
- 5.3 Civil Code Presumption Regarding Validity of Marriage**
- 5.4 Conflicts of Laws May Arise if Traditional Forms of Marriage Are Accepted**

**Chapter 6 Unmarried Cohabitation**

- 6.1 Problems with Proof**
- 6.2 Importance for Probing Paternity**

**Chapter 7. Variability of the Marriage Contract**

- 7.1 Types of Marital Contracts**
- 7.2 Antenuptial Contracts - Validity and Subject Matter**
- 7.3 Agreements during marriage, Reconciliation Agreements**
- 7.4 Tax Consequences of Antenuptial Transfers**

**Chapter 8. Spouse Rights and Obligations in the Ongoing Marriage**

- 8.1 Family Support**
- 8.2 Husband - Chief of the Household, Is It Unconstitutional?**

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- 8.3 Actual Agency, Civil and Commercial Code
- 8.4 Authority to Purchase Necessaries
- 8.5 Medical Care
- 8.6 Property Rights during Marriage, Civil, Commercial, and Civil Procedure Codes
- 8.7 Community Property, Civil Code, Traditional Law
- 8.8 Survivor's Rights in Partner's Death, Formal vs. Traditional Custom
- 8.9 Conflicts of Laws Could Arise in Accepting Both Systems

**Chapter 9. Issues in the Ongoing Marriage**

- 9.1 The Women's Name after Marriage
- 9.2 Immunities
- 9.3 Intra-Family Crimes
- 9.4 Testimonial Privilege, Criminal Code and Criminal Procedure Code

**Chapter 10 Equality of Spouses**

- 10.1 Constitutional Principle, Sex Equality
- 10.2 Discriminatory Legislation in the Civil and Commercial Codes

**Chapter 11. Parent and Child Relationship**

- 11.1 Definition of Illegitimate Child in Civil Code, its Unconstitutionality
- 11.2 Are illegitimate Children Entitled to Inheritance?
- 11.3 Probing Paternity: Testimony, Blood Tests
- 11.4 Parental Acknowledgement, Obligation to Register Child

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## **Chapter 12 Adoption**

- 12.1 Provisions in the Civil Code and Statuto de Assistencia Jurisdictional Aos Menores de Untramar**
- 12.2 Traditional Groups in Mozambique do not accept the concept of Adoption**
- 12.3 Legal Effects of Adoption, Civil Code**
- 12.4 Requirements for Adoption, Suitability of Possible Parents**
- 12.5 Revocation of Adoption**

## **Chapter 13. Parent and Child Relationship**

- 13.1 Parent Authority and Custodial Obligations, Civil Code, Civil Procedure Code and Statuto de Assistencia Jurisdictional Aos Menores de Ultramar**
- 13.2 Emancipation**
- 13.3 Parent Immunity**
- 13.4 Parent Criminal Liability for Crimes to Children**
- 13.5 Compulsory Schooling and Parental Control**
- 13.6 Social Agencies Involvement and Minor Courts**
- 13.7 Medical Care**

## **Chapter 14. The Child Support Obligation**

- 14.1 Father's Obligation According to the Civil Code**
- 14.2 Mother's Obligation According to the Constitution**
- 14.3 Factors in Awarding Child Support, Research in the Subject has been done by the Center of African Studies, "Women and the Law" Project in Alimony and Child Support, University Eduardo Mondlane, Maputo**
- 14.4 Modification of the Child Support Award, Research in Civil Section of the Courts should be done**

- 14.5 Duration of the Support Obligation, Research in Civil and Minor Sections of the Court in Maputo and other cities, if possible
- 14.6 Child Education, What Is the Limit, Secondary Education, Higher Education According to the Means of the Father and Mother

**Chapter 15. Child Support Enforcement**

- 15.1 Civil and Criminal Remedies, Some Research Has to Be Done in the Courts to Codified Principles
- 15.2 Opinion of the Attorney General

**Chapter 16. Child Neglect and Abuse, Dependency, Termination of Parental Rights**

- 16.1 Neglect, Dependency and Abuse, Civil Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code, Estaturo de Assistencia Jurisdiccional Aos Menres do Ultramar and the Study of the Practice of the Civil Section of the Courts.
- 16.2 How the Ethnic Groups Approach these Subject
- 16.3 Termination of Parental Rights
- 16.4 Criminal Prosecution
- 16.5 Possibility of Creating a Juvenile Courts
- 16.5 Participation of the Attorney General (Procurador), Social Institutions and Religious Institutions

**Chapter 17. Child Custody on Divorce and lost of parents**

- 17.1 Minor Children go with the mother, Civil Code
- 17.2 Is Anything in Mozambique as the "Child Best Interest", the Courts Practice and the Opinion of the Attorney General (Procurador).
- 17.3 Traditional Ethnic Groups
- 17.4 Visitation Rights in the Formal and Traditional Systems
- 17.5 Joint Custody in the Formal and Informal Systems

- 17.6 Reasons for Awarding Child Custody
- 17.7 Awarding Child Custody to Grandparents and Visitation Rights with Grandparents
- 17.8 Motives for Changing Custody
- 18.9 Parental Kidnapping

**Chapter 19 Termination of Marital Status**

- 19.1 Divorce, Civil Code, Commercial Code, Code of Civil Procedure vs. Traditional Marriages
- 19.2 Reasons for Divorce, Recent Law that Has Not Been Published in the Diario Oficial Deals with Non-fault Divorces
- 19.3 In Condonation an Analysis of the Community Tribunals will give good information
- 19.4 Collusion

**Chapter 20. Separate Maintenance and Divorces from Bed and Board and Annulment**

- 20.1 Limited Divorces, Civil Code vs. Traditional laws
- 20.2 Reasons for Annulment, Reasons Contained in the Civil Code Should Be Extended if Catholic Marriage is Again accepted
- 20.3 Conflicts of Laws than can arise

**Chapter 21. Family Courts, Conciliation, Mediation, Arbitration and Right to Be y Represented by Counsel**

- 21.1 Creating Sections in the Courts Dealing Only with Family Matters
- 21.2 The participation of the Office of the Attorney General (Procurador) in Family Litigation
- 21.3 The Right to Counsel, INAJ, the Bar Association, Appointment of Counsel by Judge
- 21.4 No need of Counsel in Simple Cases, Libraries, Dissemination of Information
- 21.5 Conciliation and Marriage Counsel, the Need for the Social Worker, the Formal and the Informal system, The Tribunals Comunitarios

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- 21.6 Divorce Jurisdiction - Residence Requirements and Recognition of Foreign Divorces
- 21.7 Service of Process
- 21.8 Annulment Jurisdiction and Limited Divorce Jurisdiction

**Chapter 22. Economic Consequences of Divorce**

- 22.1 Alimony
- 22.2 Who Owes Alimony to Whom and Why in an Egalitarian Society?
- 22.3 Relevancy of Fault
- 22.4 No-Fault
- 22.5 Husband's Ability to Pay
- 22.6 The Ex-Wife Remarriage in the Traditional System, under the Civil Code
- 22.7 Social Security

**Chapter 23. Division of Property**

- 23.1 Community Property vs. Traditional Marriages
- 23.2 Distribution of Property upon Divorce
- 23.3 Possible Conflict Problems

**Chapter 24. Separation Agreements**

- 24.1 Separation
- 24.2 Reconciliation
- 24.3 Relationship of Separation Agreement to the Divorce Decree

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## ANNEX 3

### TERMS OF REFERENCE

#### RECOMMENDED ASSISTANCE

In addition to the training assistance described in Chapter III of the report, it is recommended that USAID provide the following categories of technical assistance in the legal reform field, in order of priority:

##### **1. Family Law Revision**

Two consultants are recommended, as follows:

##### Legal Consultant on Family Law

The Consultant on Family Law should have a law degree, be skilled in legal writing, be fluent in Portuguese, have experience with traditional African legal systems, and have practiced or taught family law. Experience in drafting laws, serving as an administrator or judge of family law, and/or multiple legal systems is desirable.

The task of the Family Law Consultant will be to:

- a. Review Articles from the Civil Code, the Code of Civil Procedure, and the Code of Criminal Procedure to become familiar with all the articles.
- b. Review the material prepared on previous USAID studies on the issue of Family Law.
- c. Gather and review the research done by other institutions including the Center of African Studies and the Ministry of Health, on Social Services such as adoption and women's rights, looking specifically in the areas where traditional legal systems differ from the formal law.
- d. Assist the Working Group of DIL within the Ministry of Justice, in drafting the Family Code.

The time for accomplishing this task should be three months.

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### Senior Advisor Expert in Legal Anthropological Research and Analysis

The Senior advisor should specialize in anthropological research and analysis of traditional customary practices related to family law. Someone from a university faculty or private group devoted to studies of traditional practices of tribal groups in the area of family law, inheritance, and individual rights would be suitable. Private sector experience would be useful but not essential.

The task should encompass the following:

- a. Evaluating resolution of disputes in lower courts from the anthropological perspective for the purpose of determining what tribal and customary practices presently operate in the society among defined tribal groups.
- b. Work in conjunction with a lawyer experienced in family law to suggest how the traditional and customary practices may be evaluated in a larger, more extended and systematic way to determine the extent of tribal and customary practices presently operative in the society;
- c. Conduct several seminars for the judicial community and interested government officials on the objectives of a proposed study of current practices.

The scope of the work is expected to extend about six months with a final report including a plan for gathering and evaluating current practices by Mozambicans for the purpose of evaluating the practices in drafting a new family law.

### **2. Drafting a New Penal Code**

A consultancy is recommended in this area, as follows:

#### Legal Consultant on Criminal Law

The Consultant on Criminal Law should have a law degree, be skilled in legal writing, be fluent in Portuguese, have practiced, prosecuted, or taught criminal law. Experience in drafting laws or serving as a judge would be useful.

The task of the Consultant will be to:

- a. Review Articles from the Penal Code, the Code of Criminal Procedure, and relevant statutes, to become familiar with all the articles.
- b. Review previous studies on the penal system and criminal justice administration.
- c. Interview relevant personnel from the Ministry of Justice, the courts, and individuals and organizations involved in criminal defense.

- d. Assist the Working Group of DIL within the Ministry of Justice in drafting a new Penal Code.

The time for accomplishing this task should be four months.

### **3. Revision of Code of Civil Procedure**

A single consultancy is recommended, as follows:

#### **Senior Legal Consultant on Civil Procedure**

The Consultant on the Law of Civil Procedure should have a law degree, have taught or practiced the subject, have experience with international aspects of the law, and be fluent in Portuguese. It is desirable that the Consultant have practiced the law, drafted statutes and/or served on bar committees concerned with statutory revision.

The task of the Consultant will be:

- a. To visit Mozambique first for at least five weeks to gather and research the current law;
- b. Provide the Mozambique Government a proposed draft of revisions;
- c. Return to Mozambique for at least three months to assist the Mozambique Government in revision of the law and conduct seminars on drafting law for the Mozambique Government.

### **4. Commercial Law Revision**

Four consultancies are recommended in this area, as follows:

#### **Senior Legal Consultant in the Law of Commercial Paper**

The Consultant on the Law of Commercial Paper should have a law degree, have taught or practiced the subject, have experience with international aspects of the law, and be fluent in Portuguese. It is desirable that the Consultant have practiced the law, drafted statutes and/or served on bar committees concerned with statutory revision.

The task of the Consultant will be:

- a. To visit Mozambique first for at least three weeks to gather and research the current law.
- b. Provide the Mozambique Government a proposed draft of revisions.

- c. Return to Mozambique for at least two months to assist the Mozambique Government in revision of the law and conduct seminars on drafting law for the Mozambique Government.

#### Senior Legal Consultant in the Law of Sales

The Consultant on the law of sales should have a law degree, have taught or administered the subject, have experience with international aspects of the law, and be fluent in Portuguese. It is desirable that the Consultant have practiced the law, drafted statutes and/or served on bar committees concerned with statutory revision.

The task of the Consultant will be:

- a. To visit Mozambique first for at least three weeks to gather and research the current law.
- b. Provide the Mozambique Government a proposed draft of revisions.
- c. Return to Mozambique for at least two months to assist the Mozambique Government in revision of the law and conduct seminars on the law.

#### Senior Legal Consultant in the Law of Insurance

The Consultant on the law of sales should have a law degree, have taught or administered the subject, have experience with international aspects of the law, and be fluent in Portuguese. It is desirable that the Consultant have practiced the law, drafted statutes and/or served on bar committees concerned with statutory revision, and/or be familiar with the current utilization of computer record keeping in the area of the law.

The task of the Consultant will be:

- a. To visit Mozambique first for at least three weeks to gather and research the current law.
- b. Provide the Mozambique Government a proposed draft of revisions.
- c. Return to Mozambique for at least two months to assist the Mozambique Government in revision of the law and conduct seminars on the law.

#### Senior Legal Advisors for Revision of Notary and Registration Statutes and Administration.

Recommended are two senior Consultants with experience in court administration including selection and administration of procedures and practices for registrars and notaries. Direct administrative experience is essential for the first Consultant with

primary experience in administration. Experience in drafting rules and procedures for court administration is essential for the second Consultant.

The task would encompass the following:

- a. Advising on the revision of the Codes for registrars and notaries to correspond to current court practices and public service requirements;
- b. Investigating current court, notary practice and registration procedures to evaluate the current service to the public and support of the courts;
- c. Advising new procedures and practices including current technology, which standards could be adopted and how the such changes to the law could be effected.

The effort should take about two months for each of two consultants.

## **5. Environmental Law Revision**

Two consultancies are recommended in this area, as follows:

### **Senior Technical Advisor Expert in Environmental Planning and Management (EIA)**

The senior technical advisor should be a specialist in environmental impact assessment and environmental planning including preparation of large scale EIAs, small scale and environmental screening techniques. A university faculty member of environmental studies or a governmental planning unit would be suitable. Private sector experience would be useful but not essential.

The task should encompass the following:

- a. Evaluating available information on the nation's environment. The information is contained in the National Water Map and other national and international studies, satellite evaluations maintained by survey groups, and local administrative experience;
- b. Advising appropriate government officials on how EIA would benefit the nation, suggesting statutory provisions requiring an EIA for projects above an appropriate minimum scale and effect (this portion of the task should be done in conjunction with an environmental lawyer) - the statutory provisions usually include review and decision by a government body of EIAs prepared and submitted by the activity proposing the work, and advising select government officials on how to conduct an effective EIA;
- c. Advising on practices and procedures to gather and evaluate essential information to make informed EIA decisions; and

- d. Conducting several seminars to wider audiences of interested parties within the nation, to provide direction to activities that would be required to prepare and present EIAs for approval.

The scope of the work is expected to extend about three months with a final report.

#### Senior Technical Advisor in Water Standards and Quality

The Senior technical Advisor on water standards and water quality should have experience in setting up and managing a government water standards and quality control program including: experience with standard setting, licensing, enforcement and field operations, and supervision and teaching of staff. Work experience in pollution control and natural resource management in agricultural and coastal areas including estuaries is essential. Experience in fisheries, forestry, and soil erosion is desirable.

The Consultant, as a senior technical advisor, will assist the National Commission on Environment staff by instructing them and environmental groups capable of carrying out government laws and policy on how to preserve the quality of water for personal use, agriculture and fisheries.

The task should encompass the following:

- a. Suggesting statutory provisions for achieving the goal of minimum water standards and quality;
- b. Proposing statutory provisions suitable for the current state of affairs in Mozambique;
- c. Instructing individuals selected to carry out government policy and regulations as proposed in this area;
- d. Providing a detailed plan for obtaining information required for informed decisions including prior studies, water flow and water quality samples, surveys of encroachment of salinity, soil analyses, fertilizer and pesticides affects on health, etc.;
- e. Advising on the establishment and maintenance of a government information center and reference library serving as reference for water quality standards criteria. Such library would include the results of international research on the affects of natural and pollutant materials in water; and
- f. Advising on further programs to assist the establishment and operation of an effective national water program.

**The term for such consultancy would be about three months in country with a report encompassing the major areas of statutory basis, instruction and establishment of an administrative group with a reference library, and planning proposals.**

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## **ANNEX 4**

### **FOOD AND HEALTH LAWS**

#### **LEGISLACAO SANITARIA PUBLICADA APOS A INDE ENENCIA NACIONAL**

1. **Cadereta de control de inspescoes sanitarial, Portaria 11/78, 14 Janeiro, B.R. 6**
2. **Obregatoriedade de obtenscao e porte do boletim de sanidade, Decreto Lei 5/80, 22 Outubro, B.R. 42**
3. **Trabalhadores dos diferentes ramos de actividades que devem ser portadores do boetim de sanidade. Despacho, 26 Novembro 1980, B.R. 4**
4. **Emisso e revalidascao do boletim de sanidade, D. Ministerial 73/82, 22 Setembro, B.R. 7**
5. **Crimes contra a Saude Publica no ambito de higiene alimentar, Lei 8/82, 23 Junho, B.R. 40**
6. **Regulamento sobre os requisitos higienico-sanitarios dos estabelecimentos alimentares, Diploma Ministerial 51/84, 3 Outubro, B.R. 40**
7. **Alimentos importados, Diploma Ministerial 80/87, 3 Julho, B.R. 26.**
8. **Aditivos Alimentares, Diploma Ministerial 100/87, 23 Setembro, B.R. 38**
9. **Importacao, registo, transporte, producao e comercializacao de PESTICIDAS, Diploma Ministerial 88/87, 30 Setembro, B.R. 39.**

**ANNEX 5**

**LIST OF LAWS REVIEWED IN THE BUSINESS AND COMMERCIAL SECTOR**

**Law concerning State Enterprises, Lei No. 13/91 Boletim da Republica, December 31, 1991.**

**Law concerning the re-tauration Private Enterprise, Lei No. 15/91, Boletim da Republica, August 3, 1991.**

**Direct Foreign Investment, Lei No. 4/84, Boletim da Republica, August 18, 1984.**

**Regulations on Directo Foreign Investment, Decree No. 8/87, Boletim da Republica, January 30, 1987.**

**Diploma concerning the Registration of the Importer, No. 21/91, Boletim da Republica March 6, 1991.**

**The Mozambican Bank, Lei No. 1/92, Boletim da Republica, January 3, 1992.**

**ANNEX 6  
PRELIMINARY LISTING OF STATUTORY CHANGES REQUIRED  
BY THE NEW CONSTITUTION OF MOZAMBIQUE**

The Consultant conducted a review of the codes, laws and regulations of Mozambique from the point of view of their constitutionality. The list can serve as a point of departure for a more in-depth inquiry into the constitutionality of Mozambican statutes.

This listing also emphasizes the importance of assessing the amount of work and setting guidelines and priorities to implement the articles of the Constitution. Since the country has scant resources in terms of capital and trained personnel, organization plays a critical role in enabling the MOJ to maximize resources. The MOJ should make a periodic review of the list of laws that have been drafted and identify those that need to be drafted because at present, the Ministry does not have adequate records of the laws that have been changed. Since codes are not published regularly, it is difficult for the public to know how the laws are modified, changed or repealed.

As a result of her review, the Consultant noted 51 Articles which are in greatest need of reform. These articles are listed below (Table 1):

<u>Article</u>	<u>Needs</u>	<u>Subject</u>
3 (2)	(New law needed)	1. Territorial waters fixed by Law.
4 (3)	(Work done by World Bank)	2. Administrative structure & power to decide on policy and administrative organization.
9 (2)	(New law needed)	3. Religious activities subject to Law.
29	(New law needed)	4. Conditions under which naturalized citizens may exercise public functions or private functions of public interest.
32 (4)	(No new law needed)	5. Formation/structure/operation of political parties.
35	(New law needed)	6. Goods and services within public domain.
47	(Should be revised)	7. Land use Law.
50	(Should be revised)	8. Taxation.

<u>Article</u>	<u>Needs</u>	<u>Subject</u>
54	(No new law needed)	9. Delivery of medical and health care.
55	(Priority need for new law)	10. Family Law and marriage.
69	(New law needed)	11. Law punishing all discriminatory acts.
74 (4)	(No new law needed)	12. Regulation of freedom of speech and expression.
75	(New law needed)	13. Freedom of assembly within terms of the Law.
76	(New law needed)	14. Social Organizations Law.
79	(New law needed)	15. Copyright Law.
84	(New law needed)	16. Military Service Law.
85 (2)	(New law needed)	17. Sanctions for acts against the Constitution.
86 (2)	(New law needed)	18. Expropriation Law.
87	(No new law needed)	19. Inheritance Law.
83	(No new law needed)	20. Employment dismissal Law.
90	(No new law needed)	21. Trade Union Law.
91 (1) (2)	(Revision needed)	22. Law re right to strike.
94	(No new law needed)	23. Right to health care within Law.
97	(New law needed)	24. State liability for illegal acts of agents.
100	(No new law needed)	25. Legal aid provisions.
101	(New law needed with new Code of Civil Procedure)	26. Preventive imprisonment.
102	(New law needed with new Code of Civil Procedure)	27. Writ of Civil Habeas Civil Corpus.
104	(New law needed)	28. Privacy of correspondence.

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<u>Article</u>	<u>Needs</u>	<u>Subject</u>
105 (2)	(No new law needed)	29. Law re Supreme Council for Mass Communication.
106 (3)	(New law needed)	30. Law re rules for states of war/siege/emergency.
107 (4)	(New law needed)	31. Electoral Law.
112 (2)	(No new law needed)	32. Law re Public Administration.
114 (4)	(Consolidation needed)	33. Law re Composition/powers/operation of Provincial Governments.
115 (2)	(New law needed)	34. Law re provincial electoral bodies.
120 (j)	(New law needed)	35. Law re titles, awards distributions.
122 (d)	(New law needed)	36. Appointment of military officers in terms established by Law.
129	(New law needed)	37. Permanent incapacity of the President.
146	(New law needed)	38. Qualification or resignation of Deputies.
147 (3)	(New law needed)	39. Law re standing Commission of Assembly.
151	(No new law needed)	40. Council of Ministers account to President/Assembly as provided by Law.
154 (1)	(No new law needed)	41. Law conferring power to Prime Minister.
160	(New law needed)	42. Law re National Defense and Security Council.
170 (5)/172	(No new law needed)	43. Supreme Court Law.
174	(No new law needed)	44. Administrative Court Law.
175	(No new law needed)	45. Law re other Courts.
177	(New law needed)	46. Law re Office of Solicitor General and Supreme Council of Public Prosecutor.

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<u>Article</u>	<u>Needs</u>	<u>Subject</u>
184	(New law needed)	47. Constitutional Council Law.
190	(New law needed)	48. Local State office Law.
191	(New law needed)	49. Local State Elected Bodies Law.
192 (3)	(New law needed)	50. Incompatibilities.
195	(New law needed)	51. National Anthem.

**The Consultant based this analysis in part on the work done previously by Anne Williams, Technical Analysis, Legal Systems AFR/ONI. Draft laws were not provided. Therefore, some new laws might have been drafted that the Consultant was not aware of.**