

## **LEGAL EMPOWERMENT and ACCESS to JUSTICE as INSTRUMENTS for GOOD LAND GOVERNANCE**

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This paper looks at using legal empowerment to address poor land governance, and lay the foundations for participatory, rights-based and equitable land access and use. It presents a FAO programme in Mozambique, at the Legal and Judicial Training Centre (CFJJ) of the Justice Ministry. The programme integrates paralegal training in land, natural resources and environment for non-governmental organization (NGO) staff working at community level, and training for 'frontline' government administrative officers and justice services. This 'twin-track' approach empowers citizens by telling them about their rights, and gives them practical legal support. It also empowers local government officers by explaining the legal framework and how to use it in practice to respond to local needs; and it can also circumvent institutional and political pressures which favour 'fast tracking' investment over participatory and equitable development. The result is greater local *social accountability* - citizens 'extracting' a better, rights-aware response from local public services and investors alike. Underlying causes of land conflict and injustice are replaced with new ideas and community-investor partnerships. The good governance of land and natural resources by district administrators and other local officials feeds into changing attitudes and policy orthodoxies higher up.

### **1. INTRODUCTION**

Mozambique is a country blessed with abundant natural resources and a wonderful coastline, a magnet for all kinds of investor and speculator. The people with historical rights over these assets have endured decades of poverty, civil war, and recurring natural disasters. They know how to farm and use their land, and could use much more of it if they could get credit and good technical and marketing support. Getting access to these inputs requires secure land rights, as a form of guarantee for lenders or future business partners, and to give rights-holders the confidence to invest in their own land over the long term.

In December 2013 a conference took place in Maputo, the capital of Mozambique, attended by some 80 paralegals. Most were trained in land and related natural resources laws at the Centre for Legal and Judicial Training (CFJJ) of the Mozambican Ministry of Justice, in a programme developed with technical assistance from FAO. They were from all parts of the country; around half were women. Everyone spoke enthusiastically about their work in rural communities, raising awareness of local rights

over land, including women's rights. They also discussed how their work helps people in communities and in local government to make better use of progressive land and natural resources laws in Mozambique, to create an equitable and inclusive form of development which respects local rights and allows local communities to participate in and gain from investment projects using their land.

There were also many stories of the law being blatantly disregarded, by investors and by government officials conniving with them. The result is often the *de facto* enclosure of community managed resources and serious threats to local livelihoods and food security. Happily these stories were balanced by more positive accounts - local governments asking paralegals to help with land disputes, cases against unscrupulous investors being won in court, and male leaders changing their views about women being able to hold and use land in their own right.

This paper describes the genesis of this programme and its 'twin-track' methodology to 'extract accountability' from local governance structures and achieve a more equitable and socially-accountable form of land management and rural development. It begins with a brief account of FAO's long involvement in land in Mozambique and the challenges facing today's local communities whose land is a constant target for investors, often with State backing. The policy and legal framework developed in the mid-1990s has had some success in protecting local rights, but has failed to live up to its full potential. Implementation of its inherently progressive and democratic vision of land governance has been constrained by institutional and political factors that have lagged far behind policy and legal advances.

The paper shows how the CFJJ-FAO programme responds to this problem by creating the momentum for change at local level even when governance institutions and entrenched administrative cultures are slow to adapt. A key area of concern is gender and women's rights over land. The programme has a specific approach to this issue, which replicates the twin-track idea by directly supporting women when necessary, while also seeking to change the normative reality they live within.

The implications of this approach for land governance and sustainable development are then discussed, with some reference to comparative material from other countries. It shows that while paralegals have an important role in raising awareness of rights and providing basic legal support, real progress towards a more equitable form of development requires a better and more open response from local land governance structures, or more precisely, those who work in them. The resulting 'twin-track' methodology can create a stronger sense of 'social accountability' amongst local government and land sector officers, even in institutional structures that traditionally fail to respond to local needs. Paralegals meanwhile not only

defend rights and support communities – for example during consultations with investors – but also build local confidence to engage with state officials and investors. All of this translates into an ability to ‘extract accountability’ from public officials who govern and administer local land, and from investors who would use local land without due concern for potential impacts.

The CFJJ-FAO experience shows that consistent ‘civic education’ and legal support are essential for real empowerment to take root, but that this may not be enough for local people to successfully exercise their rights and bring about change. In complex and unresponsive institutional landscapes, ways must be found to change the attitudes of those who implement the laws as part of their day-to-day working life. An ‘empowerment chain’ is needed to address institutional weaknesses and change attitudes that block inclusive development and empower local people to challenge and engage with other actors; in this way an important and progressive land law might yet achieve its full potential.

## **2. THE GENESIS of the CFJJ-FAO PROGRAMME**

### **2.1 POLICY and LEGAL REFORMS**

The CFJJ-FAO paralegal and local government programme which ended in 2014 was the last in a series of FAO land projects in Mozambique that go back to the mid-1990s. Soon after the end of the civil war in 1992, family farm systems research revealed how large areas of land are needed to sustain integrated production strategies that are well adapted to local climate and agro-ecologies (De Wit 2006; De Wit et al 1995; FAO 1994). These areas were much larger than the few hectares per household normally associated with the so-called ‘family sector’ in the minds of most political leaders. This important insight also had profound implications as many displaced people were returning to their land to find it already allocated to strangers by government agents who considered it unused and unoccupied (Tanner 2002).

The resulting tenure insecurity over essential resources was recognised as a threat to the still fragile peace process, and to the longer term viability of the millions of small farms that were – and still are – the bedrock of the rural economy. FAO was asked to develop a project to secure smallholder land rights while also creating the tenure conditions to attract new private sector entrepreneurs, who were already seen as essential for future growth and development. Working with the Interministerial Commission for the Revision of Land Legislation (‘the Land Commission’), the project drew on the farm systems work and reports by national experts including anthropologists, many of whom argued that most land in Mozambique was in fact already occupied by communities using extensive integrated farming systems of

one kind or another. It also used ideas on territorial occupation and land management developed in West Africa and Namibia (*op. cit.* Tanner 2002).

The result was a policy and legal framework – the 1995 National Land Policy (NLP) and 1997 Land Law - which is still said to be one of the best and most progressive in Africa (McAuslan, 2013). One of its notable features stems from the fact that the law was developed through an open dialogue with a wide range of stakeholders, and ever since has enjoyed a high level of national ownership and legitimacy (*op. cit.* Tanner 2002). The process can also be seen as the ‘indigenous modernization’ of the pre-existing legal framework, bringing together genuinely Mozambican land management systems and more western, individualised land tenure, within a single law.

The strategic vision behind the Land Commission approach is fundamental, recognising the security of local land rights as part and parcel of an inclusive development model with a clear role for private investment. This development model is however subject to two important conditions, indicated clearly in the ‘declaration’ or vision statement of the NLP:

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

(in Serra 2012:29)

The Constitutional principle of land owned by the State was not up for change, and is still the core pillar around which Mozambican land governance is organised. The State is able however to issue a strong, exclusive private right that theoretically is not easily revoked. This ‘land use and benefit right’, or DUAT<sup>1</sup>, is valid for 50 years with a right to renew for another 50 and can also be inherited. It therefore includes features of freehold tenure within what is a long-term, privately-held leasehold issued by the State, except that it cannot be bought, sold or mortgaged. The major advance in the NLP was to recognize all land ‘customary rights of access and management over the land of resident rural populations, promoting social and economic justice in the countryside’ (Serra 2012:29). This effectively means the land rights held by most poor Mozambicans. The 1997 law gave this principle concrete meaning by specifying ‘occupation according to customary norms and practices’ as one way of acquiring a DUAT. At a stroke all customarily acquired land rights became DUATs in law, without any need for formal allocation by the State, or registration. Moreover a DUAT acquired in this way could extend beyond

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<sup>1</sup> In Portuguese, the ‘*direito de uso e aproveitamento da terra*’

individual farm plots and nearby grazing, to include all the land and resources used by households or even several villages within a single collective DUAT, held by a ‘local community’.

Together with the legal formalisation of all customarily-acquired land rights, the notion of a customarily-defined DUAT held collectively by a ‘local community’ is perhaps *the* major innovation of the 1997 Land Law. Equally important is the provision that each ‘local community’ manages its own land and natural resources, including the individual DUATs of its constituent households and families, using its specific ‘norms and practices’. This role includes using these same norms and practices to identify the spatial limits of its DUAT.

New DUATs can also be requested directly from the State, via its land management institutions. This is the route taken by private sector interests, including foreigners wanting land for investment projects. These requests must be preceded by a ‘community consultation’ to see if the land is ‘free from occupation’; if it is not, the consultation process must then establish the conditions – described in the law as a ‘partnership’ – for the existing rights-holder to give up their land to the investor. There is no legal imperative however for the community to say ‘yes’, although the final decision in fact rests with the local District Administrator. Later additions to the regulatory framework reaffirm the need for such partnership agreements to be included in applications by investors for new DUATs, especially when ‘large areas’ – defined as over 10,000 hectares – are involved<sup>2</sup>.

The challenge then was how to identify and give spatial form to a ‘DUAT by occupation’ on the ground. With FAO support, the Land Commission and civil society developed a participatory methodology – community rights delimitation - to identify and record rights acquired by customary occupation that were now legally recognized but not recorded in official records (Land Commission 2000; FAO 2009). An analysis of the local land use system in a given area, including the social and local political relationships shows how a group of households or villages share a ‘common interest’, and establishes which land and natural resources are used in some way to sustain long-established livelihoods strategies. Even areas that might appear to an outsider as ‘free’ – retained for crop rotation, grazing or extracting natural resources - are included. The resulting ‘circumscribed territory’ can cover groups of households or villages, and is designated as a ‘local community’, a legal term with its own definition in the 1997 law. The local community is then collective DUAT holder, while each family or lower-level social grouping also has a DUAT, managed by their respective community. If necessary this DUAT can also be proven and

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<sup>2</sup> Council of Ministers Resolution 70/2008

‘delimited’ using the participatory methodology. Critically, the law also allows for verbal testimony and expert evidence as proof of occupation.

Legal oversight was always seen as an essential element of a programme to implement the new Land Law. The NLP implementation strategy is clear that ‘In order to resolve [land conflicts resulting from the titling process in the new law] it is necessary to train the district and community tribunals and reinforce the jurisdiction of the State at local level’. Moreover, ‘as well as a legislative revision regarding the jurisdiction of these tribunals [over land]...the system will be reinforced with training for judges and *justice auxiliaries, especially in questions relating to land*’ (*op. cit.* Serra 2012:35). In response to this, FAO developed a judicial training programme to inform Mozambican judges and public prosecutors about the new Land Law, and other new laws with strong community and public consultation content – the 1997 Environment Law and the 1999 Forest and Wildlife Law. Thus began a twelve year relationship with the CFJJ.

## 2.2 CHALLENGES for LAND GOVERNANCE TODAY

Mozambique is often mentioned in discussions of land-grabbing by international investors (Oakland 2011). A decade of growth at 7-9 percent per year, driven mainly by investments in coal, oil and gas, has also seen rising demand for land for agriculture, agro-forestry, biofuels and eco-tourism, especially in and around investment corridors and ‘accelerated development zones’ (FIAN 2010; *op. cit.* Oakland 2011). Compared with the late 1990s when the 1997 Land Law was already aiming to protect ‘unused’ or ‘abandoned’ land against new entrepreneurs, the customarily-acquired but still unrecorded land rights of the poor rural majority are now under much greater pressure.

In fact the 1997 Land Law has achieved some success in its first decade or so. The profile and reality of local customary rights has been hugely raised and given real legitimacy by the NLP/Land Law process and subsequent moves to implement it. All new DUAT requests *do* go through some form of community consultation. And a growing number of local communities have been delimiting and registering their acquired rights with support from programmes like the Community Land Initiative (iTC)<sup>3</sup> (official figures show 550 being delimited and certified from 1999-2013, covering just under 7.8 million hectares).

Success must be tempered with caution however. Public sector commitment to implementing delimitation and thus giving full protection to the majority of local land rights has always been weak (CTC 2003). From the start the ruling elite and the public land administration which served its interests were reluctant

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<sup>3</sup> In Portuguese, ‘Iniciativa para Terras Comunitárias’ – the lower case ‘i’ is a stylistic device in the official logo

to devolve State powers to communities, and even more reluctant to accept that communities already held DUATs simply by virtue of their occupation of large areas of land. They have always tended to see much of this land as ‘empty’ or ‘free’, and thus available for the State (as ‘owner’) to allocate to national or State-approved foreign investors.

For several years – in fact right up to the present - the more progressive, community elements of the Land Law have been kept alive and implemented mainly by national NGOs with bilateral support. DFID has been a key actor in this context, with initial support in the northern province of Zambezia (Norfolk & Liversage 2002) followed by the multi-million dollar iTC, co-funded with a group of ‘like-minded’ donors and later also taken up by the land component of a large Millennium Challenge programme.

There is also ample evidence also that the community consultation mechanism has been poorly used. Research into land conflicts by the CFJJ (Baleira and Tanner 2004) and many anecdotal stories from NGOs and field workers reveal how many communities have felt pressured by public officials appearing to act on behalf of the investor, with arguments like ‘the project is in the national interest’ or ‘the project will bring jobs’ (FAO 2006). Even delimited communities have seen their rights set aside in this way. It is equally clear that the consultation mechanism has been used by government agents not as a ‘development opportunity’ for local people, but principally to give a patina of legitimacy to the growing wave of land concessions for private sector projects (Tanner and Baleira 2006; Tanner 2010a).

State land administration services have only until recently responded almost solely to private interests looking for land (*op. cit.* CTC Consulting 2003), and more recent ‘land tenure regularization’ programmes funded through the MCC have tended to focus on peri-urban areas where fixed plots are more easily linked to ‘owners’. The vexed question of customarily-acquired DUATs in rural areas still needs to be properly addressed by public sector land governance institutions in a way that genuinely protects local rights and livelihoods, and allows local people to make full use of their legal rights in pursuit of their own social and economic development goals.

This is a pity, as the policy and legal framework was designed not to separate communities from investors and constrain investment-based development, but to facilitate a much more positive and proactive investment relationship between the two sides. Private investment is indeed necessary and desirable. It must however respond to the key principles in the NLP – it must be ‘sustainable and equitable, and bring real benefits to existing rights-holders. The NLP also explicitly provides for economic partnerships between existing rights holders and investors, as one way of ensuring that local people can share in the

benefits flowing from investments which use their land. Indeed the Mozambican approach significantly influenced later work on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), and is discernible in current discussions in global forums about more inclusive forms of land management and use.

Apart from the evident weakness of local people when confronted by powerful interests wanting to take over their land, the other weakness in the NLP/Land Law package was the failure to adequately reform and strengthen the land administration to implement it. This could also be seen as a result of elite reluctance to implement a law which devolves power to local people and makes access to land for private projects more difficult and expensive. Whatever the reason, the institutional set-up simply was not up to the task of effective and comprehensive land law implementation. As a result the law has probably not lived up to expectations and has failed to make the most of its potential for promoting a just and equitable approach to land governance. Land conflicts are common and often deeply divisive. And investors still count on the State as ‘owner’ to respond to demands for land which is often described as ‘free and available’, when in fact it is occupied by communities with legally recognised DUATs.

This is not an argument for banning or avoiding large-scale land acquisitions (LSLAs) or other external investments in land. It *is* an argument for using a good law correctly, and ensuring that investment brings real benefits for the original rights-holders. It is important in this context to beware of ‘false narratives’ about the perceived good or bad impact of investments, and focus instead on bringing local people into the decision-making process so that they can assess how they will be affected and agree measures that will either guarantee local livelihoods or lead to new strategies that can end poverty and improve the local quality of life (Tanner 2013). The question then is how to make this happen.

### **2.3 LEGAL EMPOWERMENT and LAND GOVERNANCE**

The discussion above points clearly to the need to a) radically improve legal oversight of Land Law implementation; b) provide legal support for local communities and their members confronted by more powerful State and private interests that want to use their land; and c) reform the land management institutions. The starting point in all of this should be a respect for the rights of those who live on and by the land being requested for investment. This should be allied with a commitment to a model of development that is sustainable and addresses local priorities as well as achieving returns for the investor and wider socio-economic goals for the government. This in turn requires the effective use of the progressive legal instruments that are available in Mozambique.

We then have to ask what is needed to enable this ‘effective use’ – what is getting in the way, what is allowing a good policy and a good law to be manipulated by powerful interests, or even set aside altogether, when it suits them? Is the law at fault, or is it the wider context in which it operates? Some do argue that the law is the problem – the ‘modernisers’ who see it is vague and unworkable and pin everything on western ideas of private property, and those who insist that ‘land belongs to the State’ and refuse to accept that communities have management as well as use rights over land they have occupied for decades and more. Most observers however put the blame on a weak public land administration, political manipulation, and extremely unequal power relations between communities and other actors. While it may well be that some improvements are needed, the general feeling is that the law is still ‘fit for purpose’ (see the review by Calengo, Monteiro and Tanner 2007).

If the law is not the problem, what is? The answer has to be found in the context in which it is operating, which is where good governance comes in. Governance is understood as ‘the way in which society is managed and how the competing priorities and interests of different groups are reconciled’; further, it is ‘concerned with the processes by which citizens participate in decision-making, how government is accountable to its citizens and how society obliges its members to observe its rules and laws. (FAO 2007b:5). Participation of any sort by ordinary people requires that they know about their rights; more than that however, when it comes to land rights they need to know and understand how their tenure rights derived from customary land management system are recognised and protected.

Early efforts to tell people about their rights under the 1997 Land Law include the impressive Land Campaign (Negrão 1999). This united 22 national NGOs and a host of community-based organizations (CBOs) to disseminate key ‘land law messages’ to villages across the country, and was an essential and significant first step. Later CFJJ research into land conflicts (FAO 2004[b]) revealed that while communities had heard of the Land Law, very few understood the real strength of their rights and *how to use them* proactively to secure social and economic benefits for themselves. Notably, consultations were not seen as a chance to negotiate with the investor and gain the real benefits foreseen in the NLP, but as meetings where local people were told about the new project and persuaded to sign a kind of ‘no objection’ to allow the new DUAT to proceed. Community leaders have been going into these meetings poorly informed about their rights, and without legal support. Presided over by the District Administrator, and often with the local Police Chief present, consultations have rarely taken place on an even remotely level playing field. Vague promises are nearly always made, but in real terms ‘compensation’ – payments for standing crops, offers of jobs - is derisory and promises are often broken. This process does nothing to alleviate poverty or improve local livelihoods (*op. cit.* FAO 2006).

It is easy to blame the local public servants for this sorry scenario, but in fact even the more senior amongst them – District Administrators, local judges, Police Chiefs – were shown in the 2004 CFJJ research to know little about the land and other natural resources laws and how to use them in practice. Their appreciation of gender and women's rights issues was non-existent. Nor did they know very much about the Constitution of Mozambique and the fundamental rights accorded to the citizens they govern. The view of 'the State' was – and still is – unremittingly negative. The almost total absence of any legal oversight was remarkable. Rural people did not see the judiciary as a way to resolve land conflicts with outsiders, and very few rural residents saw the government being in any way 'accountable to them'. If they had a land problem, they went to their local chief first. If that did not work, they or their leaders would go to the District Administrator, acting as a quasi-judicial and political authority. If they persisted, their grievances could go up through the administrative hierarchy, sometimes to the provincial Governor, whose word would be final. Politics and elites wanting resources, or less polemically, concerns about loftier, national interest questions, prevail over local needs and a more equitable investment process.

Clearly this does not add up to 'good governance'. A more participatory and equitable path requires everyone – communities, households, local government officials, and investors – to understand how the policy and legislative package can produce positive social, economic and environmental outcomes for all. Local people need to know more about their rights, and have the confidence to defend and use them. Legal empowerment works both ways too - while most investors have lawyers and other experts to help them, they must also work with the intricacies of local custom and rights, instead of seeing working with communities as a problem. And local government officials, who are in fact often acutely aware of being sandwiched between clear local needs and concerns and elite or national pressures to promote investment, need to better understand how the legal framework in fact offers a way forwards for both communities and investors. This was clear in the NLP in 1995; it is still clear today.

### **3. THE TWIN-TRACK APPROACH**

The 2004 research results strongly indicated the need for a new programme to take land law and civic education measures back into the communities, and to provide them some kind of basic legal support. They also underlined the need to work with governance structures at local level, to tell administrators and their staff, local judges, and even Police Chiefs about the various laws that regulate land and natural resources. Another yawning gap was in relation to gender and the rights of women, where work in

communities and in local government was clearly needed. Agreement was reached with the Netherlands to fund a first trial programme which was to extend through two further projects.

The methodology of attaching two sides of the empowerment and development challenge has become known as ‘twin-track’ approach. Legal empowerment of communities on one side is matched by measures to improve the way that local governance structures interact with communities on the other. The result is a process of sustainable and equitable development where the key role of the District Government in the community consultation process is far more constructive and uses the available legal instruments to promote a more equitable and consensual model of agrarian investment (Figure One).

Figure One – the ‘Twin Track’ approach



Source: FAO 2014

It is important to understand that this approach is not simply ‘pro-community’, always prioritizing community concerns over those of other interest groups. Instead, it takes into account the rights of *all* those who have an interest in using land and natural resources either for their own immediate needs, or for commercial or conservation purposes.

A central concern on the community side is to ensure that private investment is not always seen as the ‘bad guy’, and offers opportunities for local people to grow and benefit if it is planned and implemented in the right way – in collaboration with local people. Thus while conflict resolution is one part of a

paralegal's work, perhaps *the greater focus is promoting better governance and preventing conflict through a more people-centred approach to the whole issue of local planning, project approval, and the participation of local stakeholders.*

The CFJJ-FAO team opted for specially trained paralegals to address the first side of this challenge. As well as assisting with conflict cases, paralegals can help local people to be more proactive and use their rights more effectively; civic education sessions can also build the confidence needed to fully participate as citizens and stakeholders in local development plans. Paralegals can also be mediators and brokers when communities and investors meet to discuss land for a new project. They can advise them to get the best terms and negotiate agreements that are beneficial for both sides, or to refuse project which is not in local interests. In this way they can help to reduce tensions that cause conflict, enhance and diversify local livelihoods, and ensure that consultations result in much more than a few minimum wage jobs.

On the institutional side, the assumption is that reform is a long way off, and that giving local officers better tools and improving their knowledge of how the laws should work in practice will help them to be more receptive to a rights-based and equitable approach to new development and investment. This is a tough challenge when you are faced by powerful economic and government interests. This is where the second element of the programme comes in, with measures to help key local officials understand the Land Law and other natural resources laws, the Constitution, gender, and the rights of women.

In principle both paralegals and local government officers have support in high places. In response to accusations of land-grabbing by large scale land projects, President Armando Guebuza is on record telling the Council of Ministers that the law must be respected “even by those who, in contact with local authorities, attempt to give the impression that they are powerful, or are sent by powerful people, or have been given decision making power by higher authority”<sup>4</sup>. For this to happen, the officials who interact with ‘the powerful’ and govern at local level must know their laws, and be able to stand up to those who use political and economic influence to get land illegally.

## **4. THE TRAINING PROGRAMME**

### **4.1 PARALEGAL COURSES**

The legal empowerment side of the programme centred around training paralegals. Paralegals can of course range from degree-level individuals supporting lawyers in law firms, to community-based activists

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<sup>4</sup> *Notícias*, “Conselho de Ministros alargado: PR não quer conflito de terra,” Maputo, 23 August 2011, and Arsénio Henriques, “Guebuza manda recados para o ministro da Agricultura,” *O País*, Maputo, 23 August 2011.

with basic education and some elementary training in legal matters who often work alone (FAO 2014). The paralegals in this case are seen as a link between communities and higher level professional and technical support. They are not necessarily ‘of the community’ and living in it, but certainly work at community level. And given the nature of the work they do and their need to understand something about the laws they are promoting, it was decided early on that they should have at least some secondary education. Ideally they should already have some practical experience of land and natural resources issues. Participants on the courses were therefore drawn from NGOs with community-based projects, and local government sectors working on rural development and land issues. This approach also encouraged better understanding between these often opposing groups, and ensured that both sides received the same message on issues such as the content and extent of customarily-acquired DUATs. Their role was defined by the CFJJ in terms of four basic services to communities:

- mobilization
- civic education
- legal advice
- legal support<sup>5</sup>

By the time the programme ended in mid-2014, 899 paralegals had been trained in 38 courses; 328 of these were women (*op. cit.* FAO 2014:66). The course focus has been specifically on land and other laws that regulate natural resources, as well as in other legislation in areas such as tourism which has a direct impact on local development and land rights. Through a dedicated women’s land rights project, funded separately by Norway but implemented through the CFJJ-FAO team, the latter courses contained a strong focus on gender issues, and how to secure and protect the rights of women over land and natural resources.

All courses begin with the fundamentals of the Constitution, the relationship between citizen and state, and gender issues. Each of the relevant laws are presented (land, forest and wildlife, environment, physical planning, tourism etc), followed by sessions on how to use these laws to promote an equitable and inclusive form of rural development. In these discussions the question of how to establish active economic partnerships between communities holding land and investors who needed it, has always been a key element of the programme.

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<sup>5</sup> Taken from the Guide to the Paralegal Courses, produced for each course

The legal context of women's land rights has been a key issue throughout. Paralegals are shown which legal provisions to use in defence of women's rights, including options for formalising their customary tenure in their own names. This can be a complex and expensive task however, resulting in relatively few individual titles in real terms while most women continue being vulnerable to losing their land if their husbands divorce them or die prematurely through HIV-AIDs or other misfortunes (Save the Children 2007; Seuane 2009). For this reason the primary focus of this training is how to address gender and women's rights with *male* community leaders, with a view to changing the 'customary norms and practices' which govern the way women access and use land in the specific cultural context of each local community. If these can be changed, then far more women will see their tenure improve in the context of the local community management provisions of the Land Law.

The courses also have a practical component. Participants visit communities where some may be already working, and which are facing some kind of land or natural resource conflict. Here the future paralegals can test their new knowledge in practice, supervised by CFJJ trainers, and in some cases initiate legal empowerment activities which would carry on after the course had ended.

All training is highly interactive, and uses a variety of techniques which the paralegals are then encouraged to use when they go back to their posts. The first of these is the use of theatre, with each course including a twenty minute play presented by a theatre group from a local CBO to show how paralegals can help communities involved in land conflicts. Typically, an investor arrives in a rural area accompanied by a local government officer. This officer is quick to say that there is plenty of land available – this always elicits an excited and often hilarious reaction from the audience. A conflict quickly develops with the nearby community. But someone has heard of a paralegal and calls them to come and help. He or she tells the community what their rights are and explains what they can do. The investor either leaves or is obliged to sit down and negotiate over the land deal. Each group can adapt the story to local circumstances (for example some plays are about wildlife issues like illegal hunting).

A comprehensive Paralegal Manual in Environment, Natural Resources and Development has also been produced (CFJJ 2010). A second edition has already been developed with an extended gender and women's rights chapter that includes a comprehensive listing of all the constitutional and legislative provisions in Mozambican law that underpin the rights of women over land and natural resources (CFJJ 2012). The Manual includes a range of teaching materials on CD-ROM as well.

## **4.2 LOCAL GOVERNMENT and SECTOR OFFICER SEMINARS**

Local government and sector officers have been trained in three distinct groups: 'District Seminars' for key officials from districts where land and resources are in demand; government staff working in sectors that deal with land, environment, planning, conservation, tourism and rural development; and staff from government agencies supporting private sector investment. .

The 'District Officer' seminars brought together 'sectors' which traditionally are not often considered together in development programmes and training courses: the District Administrator, the District Judge and Public Prosecutor, the District Director for Economic Affairs (usually responsible for land management), and the District Police Commandant. These seminars begin with the Constitution and fundamental rights, including gender and women's rights. The land and natural resources laws are presented, and participants do group work discussions on real cases from their own district. As with the paralegal courses, the gender and women's land rights are always lively, often agitated, and expose the deep conservatism of the mostly male officials present to new ideas and ways of looking at the question. In all, sixteen District Seminars trained a total of 443 public sector staff, 99 of whom were women.

The sector training was carried out in collaboration with the National Directorate for Promoting Rural Development (DNPDR) of the Ministry of State Administration. The DNPDR invited provincial and district governments, the Investment Promotion Centre (CPI), and the Centre for Promoting Agricultural Investment (CEPAGRI), to send their staff to the seminars, which again provided a rare chance to meet in a neutral space and reconsider how they were dealing with land and other development issues. A key issue was how to promote a more equitable investment process, making much better use of the instruments in the various laws. Thus participants were encouraged to think about how the community consultation could result in mutually beneficial agreements between communities and investors, including community-investor partnerships to implement new investment projects. Over 300 staff from different sectors and the investment agencies took part.

Targeted training for around twenty senior conservation area officers focused on issues like protected species, illegal hunting and other conservation issues. But these courses also examined how the sector should do more to bring communities with historical rights of occupation in these areas into conservation strategies. Participants were encouraged to see how the principles and instruments of the Land Law can be used to include communities in conservation decisions and enable them to participate in revenues from parks and reserves in return for giving up things like hunting that undermine conservation goals.

The seminars have also been the first time that many participants had actually seen the Land Law and even the Constitution of Mozambique. Everyone received copies of legal compilations produced by the CFJJ, the Land Commission Delimitation Manual, and Paralegal Manual once it was available. For civil servants in remote areas, access to this material was literally a major ‘takeaway’ from the programme.

### **4.3 RESULTS and IMPACT**

#### **4.3.1 OVERALL IMPACT**

Mid-term evaluations of the programme and an independent Impact Study ((FAO, 2007[a], 2011[c], 2012[b], FAO 2011(c); EUROSIS 2012) show how the programme has developed an effective methodology with a good mix of classroom, fieldwork, and interactive methodologies. The training is judged to be of good quality, and has helped participants to better understand and work on land and natural resources and gender issues. Together they provide a positive picture of how the programme has created a sound base and methodology for both empowering local people and promoting a constructive and participatory development process using the available legal instruments.

On the community side, the CFJJ-FAO programme has educated local people and their leaders about their individual and collective rights over land and natural resources, and given them the tools they needed to defend them when necessary. It has reached right down to village level, across the country. With some 4-5 communities visited in each course, and with 38 courses carried out, legal and development professionals from a central level institution, and the paralegals they have trained, have taken their message down to village level in over 150 communities across the country.

On some of these occasions, they are also accompanied by district or even provincial judges and prosecutors. For many communities and ordinary villagers, it is a remarkable thing to have a ‘*doutor*’ trainer or a judge in their village talking to them about their rights in this way. This must count as one of the more outstanding features of the programme. A single trained paralegal can also reach and transmit the new knowledge acquired during the training session to several communities, reaching hundreds of people in the most remote areas of Mozambique. Rural people can then finally embark on the journey towards legal empowerment and secure tenure rights.

The available evidence, together with a comparative review of paralegals in other African countries (*op. cit.* FAO 2014) suggests however that the presence of a CFJJ-trained paralegal alone is not always enough to have a significant impact on how community members’ understand and exercise their rights (*op. cit.* EUROSIS 2012; Knight et al 2012). The paralegal networks that have been created in countries like

Sierra Leone (Maru 2006), Namibia (De Azevedo 2012) and Uganda (Aciro-Lakor 2008), and the field evidence from the Namati/IDLO project in Mozambique and elsewhere (*op. cit.* Knight et al 2012), underlines how important it is to have paralegals working in organisation that can provide professional legal support when needed, and carry on training the paralegals as they do their job.

The 2012 impact study and interviews conducted with leading NGOs and activists in Mozambique also confirm that where the CFJJ paralegals get support and are part of ‘an advocacy organization’, their impact has been substantial. Meetings with three long term NGO partners, two of which had been involved in the first pilot training and developing the theatre group methodology, confirm that both in the local communities *and in the district governments*, the work of their paralegals is much appreciated and has a great impact on the *reduction of conflict* between the communities and other stakeholders<sup>6</sup>.

#### **4.3.2 GENDER ISSUES and WOMEN’S LAND RIGHTS**

The first point to make here is that if most or all community-held land is lost to investors then there is little to be gained by arguing over how much of it women had access to or how secure their rights were. Discussions must therefore be balanced between two apparently contradictory aspects of customary land law: ensuring that the customary management provisions of the Land Law are fully implemented and that all community assets are secure, while also endeavouring to adapt and modify those ‘norms and practices’ that are prejudicial to women.

A focus on gender and women’s use of and rights over land can reinforce the security of the wider community land right – by helping communities and others to understand the importance of gender equality and include resources used by women when assessing the limits of the collective community-held DUAT. Women occupy and use a lot of the land in a local community. When they are full and equal stakeholders as opposed to a specific vulnerable group requiring specific attention, community women will have a stronger say in how community assets are managed and can prevent the worst excesses of land grabbing where deals are made between outsiders and (male) community leaders.

Moreover, given the major role that women play in agriculture and household economies, the concern to safeguard their rights has to be seen not only from a human rights and social justice perspective, but also from an economic perspective. Women with secure land rights can invest without fear of dispossession, with long-term benefits for local incomes, and the health and development of families and communities.

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<sup>6</sup> Interviews in March 2013 with staff and paralegals from the NGOs Kutsemba, LUPA, and Amudeia, attended in some cases by local government officers.

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

Women can of course go further and have their land rights formalized, and paralegals can help here too. However, addressing local land governance norms and practices, and integrating gender equality and justice into the way land is managed by local institutions, is expected to improve tenure security for many more rural women than focusing resources on securing individual titles or taking cases to a formal tribunal. Men are the guardians and managers of traditional land practices, and rural women nearly always acquire their rights through a relationship with a man, as father, husband, uncle or brother. While these men hold and control the land rights, the women are entitled to *use rather than possess* land. Thus gender work has to include men, a point that is not always understood by those who see 'gender projects' as working mainly with women and their needs. This approach should also be more cost effective, as individual titling processes are costly in local terms, and take time<sup>7</sup>.

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

## 5. DISCUSSION

The CFJJ-FAO programme has successfully maintained a focus on the rights-based and progressive elements of the policy and legal framework for land and natural resources in Mozambique. Its paralegals clearly have an important challenge helping local people deal with the injustice rooted in the institutional landscape surrounding them and pressures on their land as private investment and economic growth continue at a fast rate. The programme is also based on an understanding that this landscape must also be addressed, irrespective of talk about reforms in the longer term. The approach is not against private investment and a role for the State in promoting it. New investment injects capital and creates new

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<sup>7</sup> The mid-term evaluation of GCP/MOZ/086/NOR has confirmed that this is the correct strategy to follow. (FAO OED, August 2012. [http://www.fao.org/fileadmin/user\\_upload/oed/docs/GCPMOZ086NOR\\_2012\\_ER.pdf](http://www.fao.org/fileadmin/user_upload/oed/docs/GCPMOZ086NOR_2012_ER.pdf))

opportunities to diversify and enhance rural livelihoods, especially for rural women whose rights under customary law are often circumspect and vulnerable. Ultimately it is about how these things happen. It is a question of governance and how people are able to engage with and influence those who govern and administer their lives.

Thus the work of the paralegal in Mozambique (and other parts of Africa) is both reactive and proactive. As well as resolving conflicts, they must advise, support, mediate. They must tell people about their rights and how to use them in practice, not only to protect livelihoods but also to achieve social and economic development goals. Paralegals also have a clear role in the wider economic development context. By empowering local people and giving them information about their rights, and legal support – sometimes backed up by lawyers and courts – they seed a process of change from the bottom-up that will in its own way alter and improve the institutional landscape which currently dominates their lives.

The programme also shows that legal empowerment is ‘necessary but not sufficient’. There are many definitions of legal empowerment that are broadly similar. Cotula provides one that he has developed from the work of Golub and McQuay (2001, 2005): ‘the use of legal tools to tackle power asymmetries and help disadvantaged groups have greater control over decisions and processes that affect their lives’ (2008:15). Goodwin and Maru put it more simply and in a way that points to the power of the law to do good if it is used in the right way: ‘efforts...that seek to increase the capacity of people to understand and use the law’ (2014:9).

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

Earlier FAO programmes addressed the first step along the road to a more equitable and sustainable form of land management and land use. Both the 1995 NLP and the 1997 Land Law have set the parameters a development process that is rights-based, participatory, inclusive, and equitable, for women as well as men. But a new law is not enough - to ask elites and investors to be more aware of local rights and then

respect the right of the rights-holder to engage as a partner in development, or to promote gender equality and women's rights, means having to 'change the culture'.

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

Seeing legal empowerment as a two-step process which begins with efforts to change policies and laws implies a considerable timescale. But more than that, any project, even one dealing with the more negative aspects of customary behaviour must respect the underlying culture and proceed with sensitivity and understanding. In this context, 'legal empowerment' can be a very long term process.

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

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

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

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

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

This idea can be extended to embrace the figure of ‘the investor’ and his or her projects. Here, the paralegal is important as a mediator, a negotiator, a *representative* almost, acting on behalf of communities but also seeking to integrate the needs of other actors into whatever solution materializes. Along the way they can induce change in the minds of the investors. It is their work – and their personal skills at communication and empathy with local people – that creates a certain capacity amongst their clients, those they help to also begin to demand a better response and more respect for their rights from those who claim to govern and serve them.

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

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

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

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

With relation to gender issues, it is important that cultural realities are not seen as immutable, and that resolving the main challenges involves working with male community leaders. The CFJJ-FAO programme reaffirms the common sense and importance of recognizing the still predominant role of local culture and structures in land management and administration. On the other, it has been able to tell women – and male leaders - about the rights of women, in a way that can promote change in those

cultural norms and practices that are prejudicial to women. In line with the FAO IGETI (improving gender equality in territorial issues) approach (FAO, 2012[b]), the starting point is a discussion of gender - by accepting this as one element of the diversity that must be respected in any society, the negotiations and discussion which then takes place around gender and the rights of women can result in an inclusive and negotiated approach to the access, use and management of land and natural resources.

## **6. A FORMAT for CHANGE – the EMPOWERMENT CHAIN**

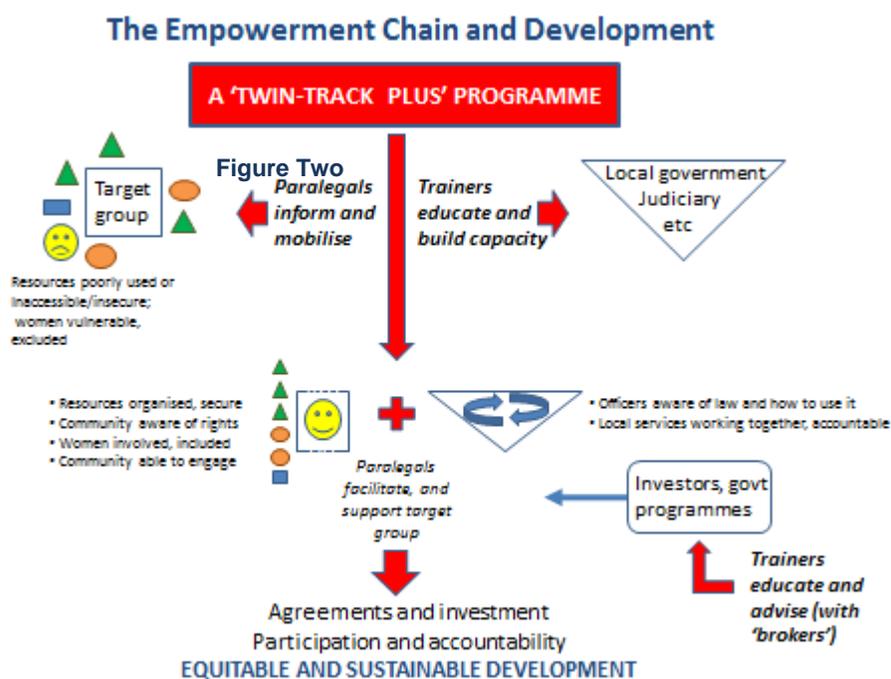
The CFJJ-FAO experience offers a concrete and effective format for promoting social change and implementing progressive new laws when institutional and cultural factors present obstacles or even oppose implementation. A rights-based and people-centred approach, mirrored in the FAO VGGT, addresses both sides of the ‘landscape’ in which poor land governance happens, and negative processes like uncontrolled land-grabbing take place.

The model developed through the programme assumes that legal empowerment involves much more than simply reforming or creating new laws, and providing judicial services and paralegals. It also requires a long term perspective in which a series of enabling conditions are put into place. In this context, a good place to start is with ‘frontline’ public officials, who experience shows, are often poorly equipped and ill-prepared to use innovative yet little-understood new laws and policies.

Addressing both sides of the picture and targeting a range of different actors, together with paralegal support to build awareness of rights and confidence in local communities, can be seen as an ‘empowerment chain’ in which many different institutions and people are involved. This chain also sets in motion a process of ‘extracting accountability’ in the very likely context that political and institutional change will lag far behind the empowerment process.

Figure 2 shows this as a continuous two-way interaction between communities and a series of actors - including paralegals - which progressively builds up a capacity to stand up to injustice and engage proactively with the outside world.

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



Source: FAO 2014

It is clear from paralegal programmes in other countries as well that setting up such a process takes a huge amount of effort and time. Keeping it going and consolidating it all into a sustainable service that can be relied upon by ordinary people well into the future requires even more resources and effort. The FAO engagement with land in Mozambique goes back to the early 1990s. In other countries equally long-term commitment has been necessary to achieve what we see today (for example, the *Timap for Justice* programme in Sierra Leone, which began in 1996 has led to Sierra Leone approving a paralegal act in its Parliament in 2012). In all cases the paralegal is seen as important agent for change and development, as well as for addressing injustice. This is underlined by a quote from the 'Kampala Declaration on Community Paralegals in 2012:

Community paralegals have empowered people in many parts of Africa to equitably resolve conflicts; to seek protection from violence; to navigate the criminal justice system; to exercise rights over land and natural resources; to access essential services like health care and education; to hold private firms accountable; and to participate in the economy on fair terms. *By doing so, these paralegals further both justice and development.* (Kampala 2012, emphasis added)

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

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

Secondly, the law is indeed ‘not enough’. To achieve genuine empowerment, which in turn leads on to citizens exercising their rights and fully participating in local and national development, a great deal more is needed. The implementation plan must be comprehensive, extending beyond merely reforming land management institutions, to reach citizens and involve them actively. It must also be set within a wider development strategy which is people-centred and prioritizes social equity and justice over the imperative of economic growth.

Paralegals trained in the relevant laws and with a proactive role in the development process are an important innovation in the struggle to implement new and progressive legislation in an era of aggressive capital and elite-led investment and economic growth. The paralegal can be an important ‘agent for change’, but is at best a ‘necessary but not sufficient’ part of tool kit of measures that can produce genuine legal empowerment and bring local people into the development process as real stakeholders. Other elements are required to address institutional and cultural norms that block implementation and prevent a progressive law from reaching its full potential. All of these are necessary elements in an ‘empowerment chain’ that can transform land governance and turn ordinary people into active participants in development instead of being mere bystanders watching others use their land and resources while they remain poor.

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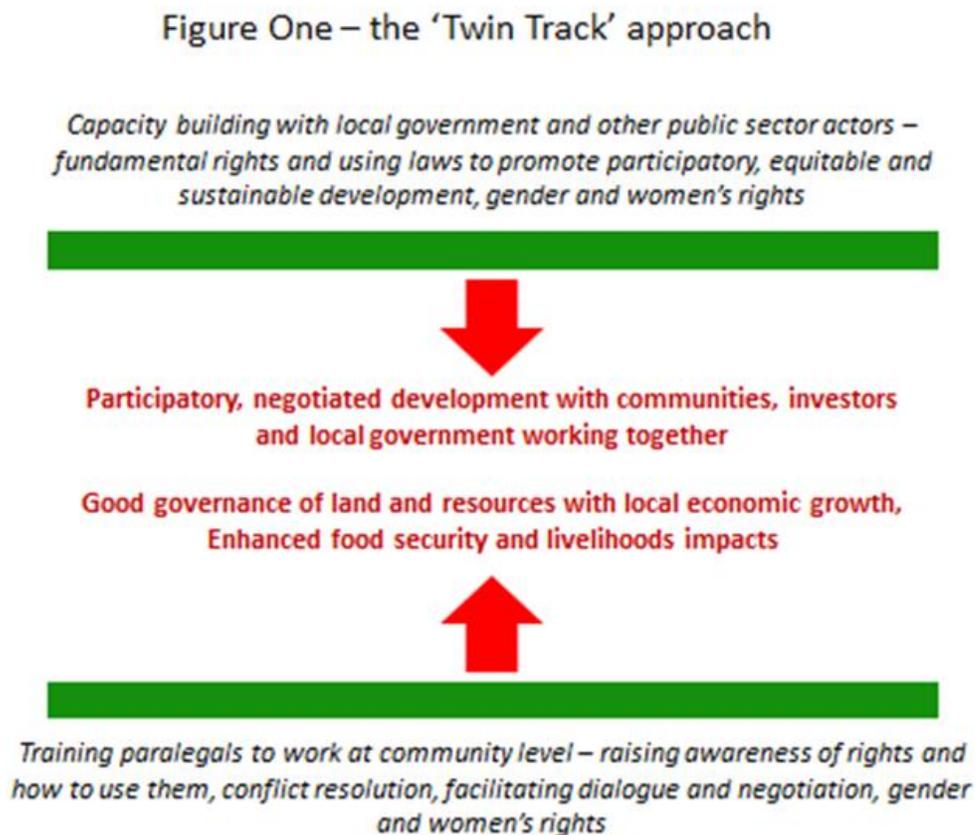
**FIGURES****Figure One.** The ‘Twin-Track’ Approach. p11

Figure Two. The Empowerment Chain and Development. p24

