Legal Framework for the Environment – Strengths, Constraints And Challenges

by Carlos Manuel Serra

1. The greening of the political discourse and the advent of a legal framework for the environment

The coming of a specific legal framework for the environment happened in Mozambique—as happened in the great majority of countries, following its participation in the Rio de Janeiro Conference on Environment and Development, held in 1992.

The environmental issue took centre stage in national political discourses starting in the nineties, taking on greater substance in subsequent years, constituting one of the cross-cutting areas of the Mozambican government's main programmatic instrument—the Five-Year Plan.

However, an important step was taken two years prior—approval in 1990 of Mozambique's second post-independence Constitution. This Constitution established a set of environmental standards not to be found in the previous fundamental text, giving particular emphasis to the precept recognising the fundamental right to a balanced environment [direito fundamental ao direito equilibrado] and the standard that embodied, even if very generally, an obligation on the part of the State to foster actions in protection, conservation and valuing of the environment (cf. Articles 72 and 37 of the 1990 Constitution).

Since that time the country has recorded significant movement in the legal-environmental domain, which has translated into four fundamental lines of approach:

i. Approval of a significant body of legislation with direct or indirect importance for the protection and conservation of the environment, including laws passed by Parliament, decrees issued by the Government, and innumerable Ministerial Orders.
ii. Creation of specific public bodies in the environmental domain, or strengthening of the powers of the pre-existing bodies, so as to include an ever-more-diversified array of environmental functions and powers;
iii. Approval of sector policies reflecting a growing concern with environmental protection;
iv. Ratification of international instruments for protection and conservation of the environment, specifically international conventions and regional protocols.

2. Structure and organisation of the fundamental framework for legal regulation of the environment

At present Mozambique has available a juridical-legal framework which may be considered up-to-date, significant, wide-ranging, suitable in many aspects and diversified, focusing on various aspects within the environmental problematic.

This framework is grounded fundamentally in the Constitution of the Republic of Mozambique (of 2004), in the Environment Law (Law Nº 20/97 of October 1) and in the respective regulations, approved by decree of the Council of Ministers.

2.1. The Constitution of the Republic

Firstly the Constitution raises the environment to the category of a fundamental juridical good of the community, beside other classic goods like life, physical integrity and the various freedoms. Constitutional protection of the environment as a juridical good was significantly reinforced in the 2004 Constitution, which not only underlined the fundamental right of all citizens to a balanced environment, and the corresponding duty to defend it, but also maximised the public interest in environmental protection (see Article 117 and paragraph 2 of Article 90,

foreseeing general and specific obligations on the part of the State as regards the environment), created an overall standard foreseeing duties on the part of the citizens toward the community, including that of defending the environment (see Article 45), established the right to popular action as a guarantee for defending juridical goods of a diffuse or collective nature, amongst which the environment (this right is foreseen in Article 81), and set out as one of the anchor principles, that of sustainable development (references expressed in Articles 11, 96, 101 and 117).

It should be added that land-use zoning *(ordenamento do território)*is nowadays enshrined in the 2004 Constitution, through paragraph 2 of Article 117, which raised it to the category of a matter of public interest, in the following terms: with the objective of ensuring the right to the environment within the framework of sustainable development, the State ought, amongst other aspects, to "foster land-use zoning with a view to a proper siting of the activities and a balanced socio-economic development".

The Constitution thus includes an important set of principles and rules directed to oversight of the environment as a juridical good of a fundamental nature, making up a true "Environmental Constitution", and consequently assigning to the ordinary legislator the important responsibility of laying the foundations as constitutionally defined, through the passing of the proper legal instruments (be they laws of Parliament, regulations of the Government or Ministerial Orders issued by the various Ministries), thus making the fundamental right to a balanced environment a reality—a right held by each and every citizen of the Republic of Mozambique.

2.1. The Environment Law

The Environment Law presently takes the form of a kind of framework law, establishing the foundations of the juridical-legal framework for environmental protection. According to its Article 2, this Law "has as its object the definition of the legal bases for a proper use and management of the environment and its components, with a view to bringing into effect a system of sustainable development in the country". It is structured into nine chapters, as

presented below, given that this has implications in relation to the respective regulation process:

Chapter I	General Provisions
Chapter II	Environmental Management Bodies
Chapter III	Pollution of the Environment
Chapter IV	Special Protective Measures
Chapter V	Prevention of Environmental Damage
Chapter VI	Rights and Duties of the Citizens
Chapter VII	Responsibility, Infractions and Sanctions
Chapter VIII	Environmental Inspection
Chapter IX	Concluding Provisions

Thus, fundamentally the Environment Law is centred on the definition of a set of concepts[1]and principles of environmental management, on [?] the setting in place of the basic institutional framework for environmental protection, on the selection of a general standard of prohibition of all activities as may cause environmental degradation, beyond the legally defined limits (with emphasis on pollution), on the [da - ?] enunciating of special environmental protection standards (with particular emphasis on the protection of biodiversity), on the foreseeing of a set of environmental prevention instruments (environmental licensing, the process of environmental impact assessment and environmental audit) and on the characterisation of the system of infractions, penalties and oversight.

Even after more than ten years of this law being in force, it remains quite up-to-date and in synch with the majority of the country's environmental problems. What was lacking perhaps, was mention of the climate change issue, which did not receive direct reference in the legal text, except for the fact of it having a relationship with other concepts envisaged, such as in the cases of desertification[2]and degradation of the environment,[3]as found in the list of concepts foreseen

1 It is important first of all for having developed a legal concept of environment, which has guided all of the subsequent legal instruments, allowing them [?] to be able, amongst other aspects, to be defended in court.

2 Desertification: according to paragraph eleven of Article 1 of the Environment Law, this "is a process of soil degradation, be it natural or provoked by the removal of plant cover or predatory use, which due to climatic conditions ends up transforming it into a desert".

in Article 1 of the Environment Law. The text by Juan Villar on Climate Change in Mozambique develops this matter, showing how the handling of climate change is dispersed and fragmented within the Mozambican politico-legal framework, and is thus deserving of proper and careful attention by way of legal reform.

2.2. Regulations to the Environment Law

In terms of regulation, a notable effort should be highlighted on the part of the Mozambican government, translated into approval of an important body of regulations regarding the main topics of the Environment Law. We will not allude to the regulations that have to do with the institutional framework and that come out of Chapter II (Environmental Management Bodies), which would be deserving of better treatment in their own right.[4]

Chapter III of the Environment Law deals with pollution of the environment, and has already been the object of a notable regulation effort. What stands out is the Regulation on Management of Biomedical Wastes (Decree Nº 8/2003 of February 18), the Regulation concerning Environmental Quality and Effluent Emission Standards (Decree Nº 18/2004 of June 2), the Regulation concerning Waste Management (Decree Nº 13/2006 of June 15), the Regulation concerning Prevention of Pollution and Protection of the Marine and Coastal Environment (Decree Nº 45/2006 of November 30)—in the part that has to do with pollution—and the Regulation concerning the Management of Substances that Destroy the Ozone Layer (Decree Nº 24/2008 of July 1).

---

3 Degradation of the environment: Under the terms of paragraph 8 of Article 1 of the Environment Law, this "is the adverse alteration of the characteristics of the environment, and includes amongst other things pollution, desertification, erosion and deforestation".

4 See amongst others, MICOA's Organic Statute (approved by Resolution 16/2009 of August 5 (Approving MICOA's Organic Statute) and corresponding Rules of Procedure (approved by Ministerial Order Nº 265/2009 of December 16), the Order that creates the Environment Fund (approved by Decree Nº 39/2000 of October 17) and the Regulation for Operation of the National Council [Concelho -> Conselho] for Sustainable Development (approved by Decree Nº 40/2000 of October 17, with the alterations introduced by Decree Nº 2/2002 of March 5).

Chapter IV of the Environment Law, in reference to special protective measures (and which includes topics like protection of the environmental heritage, protection of biodiversity, areas for environmental protection and establishment of infra-structures), has already been the target of the following regulatory instruments: the Regulation concerning Biosecurity in relation to Management of Genetically-Modified Organisms (Decree Nº 6/2007 of April 25),the Regulation concerning Access to and Sharing of Benefits arising from Genetic Resources and Associated Traditional Knowledge (Decree Nº 19/2007 of August 9) and the Regulation for Control of Exotic Invasive Species (Decree Nº 25/2008 of July 1), and further the already-cited Regulation concerning Prevention of Pollution and Protection of the Marine and Coastal Environment (Decree Nº 45/2006 of November 30), as regards protection of marine and coastal biodiversity, as well as the setting up of infra-structures in the coastal area.

In turn Chapter V, which deals with the prevention of environmental damage (including environmental licensing, environmental impact assessment and environmental audit), presently contains the Regulation concerning the Environmental Impact Assessment Process (Decree Nº 45/2004 of September 29, with the alterations introduced by Decree Nº 42/2008 of November 4), the Overall Directive for Environmental Impact Studies (Ministerial Order [?] Nº 129/2006 of July 19), the Overall Directive for Public Participation, within the Environmental Impact Assessment Process (Ministerial Order Nº 130/2006 of July 19), and the Regulation in relation to the Environmental Audit Process (Decree Nº 32/2003 of August 12).

Lastly, one should take into consideration that as regards Chapter VIII of the Environment Law in reference to environmental inspection, we have the Regulation concerning Environmental Inspection (Decree Nº 11/2006 of June 15).

2.3. Points still requiring regulation

From the summary analysis of the legal framework for the environment, what stands out is the need to carry on with the work of regulation in relation to the Environment Law, notwithstanding the enormous efforts which have been made up till the present time.

There are various aspects that deserve attention on the part of the Legislator, beginning first of all with the issue of environmental pollution. Despite the fact of this problem possessing an immense amount of legislation—with highlight going to the environmental quality standards approved by the government, mainly for soil, air and water pollution[5]—it is important as well to address the need to legislate on other forms of pollution, including noise pollution, which also enjoys a near-total lack of regulation[6],as well as light and aesthetic pollution.

Secondly, in the area of special protective measures, it is important to strengthen the biodiversity protection standards, addressing the species that didn't merit any attention, or for which the attention falls short of their true value—but also the areas of environmental protection, which await approval of a new Conservation Law and consequent setting out of regulations, reflecting the content of the new Conservation Policy.

Following that, it is important to address the setting out of regulations for Article 22 of the Environment Law, which deals with the definition of suitable procedural means to access environmental justice.[7]Now following approval of the 2004 Constitution, which foresees the element of the right to popular action as an appropriate mechanism for defence of juridical goods of a diffuse or collective nature (which include the environment), it becomes crucial to carry out the foreseeing/definition of suitable mechanisms for facilitating access to justice, whenever interests/values that have to do with the entire [que digam a toda] collectivity are involved. Thus [Dai -> Daí] in following up on the constitutional expectation governing the right to popular action, in combination with the provisions of Article 22 of the Environment Law, an

---

5 In addition to the Regulation concerning Environmental Quality and Effluent Emission Standards (Approved by Decree Nº 18/2004 of June 2), see the Regulation concerning the Quality of Water for Human Consumption (approved by Ministerial Order Nº 180/2004 of September 15) and the Regulation concerning the Quality of Bottled Water Meant for Human Consumption (approved by Decree Nº 39/2006 of September 27).

6 With an exception for the municipal by-laws concerning noise pollution, which centre solely on the definition of hours of closing for night-time entertainment establishments [estabelecimento], leaving aside many other noise sources, some of which demand that care be taken.

7 According to Article 22 of the Environment Law, "Those that deem themselves injured in their rights to an ecologically balanced environment may apply for the immediate suspension of the activity causing the injury, with one following to that end the process of application for a stay or other appropriate procedural devices".

obligation may fall upon the ordinary legislator to set rules as may facilitate access to justice on the part of the citizens, through the foreseeing of simpler, more accessible, expeditious and effective mechanisms.

Thirdly, in the area of civil liability, follow-up has yet to be made to the setting out of regulations for Article 25, which deals with public liability insurance, nor for Article 26 in reference to strict liability. This inertia has seriously contributed to the ineffectiveness of this public liability institute in the making good of environmental damage. After all, not only doesn't there exist any obligation deriving from the legislation to insure activities which—by their nature, scale or location—may be liable to cause serious damage to the environment; as well, one cannot turn to holding accountable irrespective of guilt (strict liability), due to the lack of regulations to the provisions in the Environment Law.

Fourthly, one notes that there was no follow-up to the provisions in Article 27 of the Environment Law, according to which "infractions of a criminal character, as well as contraventions as regards the environment, are the object of prior contemplation in specific legislation". If in the case of contraventions a lot of work has been done in terms of setting out of regulations to the Law—with there already being a significant framework of sanctions—nothing has occurred as regards contemplating environmental crimes, and notwithstanding the fact of certain behaviours offending seriously [seria -> séria] and gravely against the environment as a juridical good, as juridico-constitutionally enshrined, meriting for some time now the status of criminal offences. However, no significant step has been taken in the creation of a law concerning Environmental Crimes, or at a minimum, in the introduction of environmental crimes into the Criminal Code currently in force.[8]

Lastly, Article 31 of the Environment Law determined that it falls to the Government "to create economic incentives or incentives of some other nature, with a view to encouraging the use of environmentally sound productive technologies and processes". This norm likewise lacks regulations, which are key to the emergence and generalising of firms that adopt environmentally-sustainable practices.

[8] At the end of the nineties a draft Environmental Crimes Law was drawn up within MICOA, but didn't end up garnering approval within that institution, leading to the initiative dying.

3. Complementary Environmental Legislation

3.1. The incorporation of environmental standards into sectoral legislation

The juridical-legal framework for the environment is complemented by a set of laws and regulations in respect of various sectors of activity, namely lands, waters, forests and wildlife, fisheries, tourism, health, agriculture and livestock-raising, industry, trade, transport and communication, mines, petroleum resources (including natural gas), energy, public works and culture.

The concern with environmental protection became present by degrees within the vast and diffuse sectoral legislation, even if its treatment has been undertaken in a rather varied way in terms of its depth, existence and scope.

The sectors of water[9],forests and wildlife[10],fisheries[11],mines[12]and petroleum products[13]are those that at the present time find themselves in the lead in terms of development of legal-

---

9 In the water sector, see the Water Law (Law Nº 16/91 of August 3), the Regulation of Systems for Water Distribution and Drainage of Waste Water in Apartment Buildings (Decree Nº 15/2004 of July 15), the Regulation for Water Licences and Concessions (Decree Nº 43/2007 of October 30), the Small Dam Regulation (Decree Nº 47/2009 of October 7), the Regulation concerning Quality of Water for Human Consumption (Ministerial Order Nº 180/2004 of September 15) and the Regulation concerning the Quality of Bottled Water Meant for Human Consumption (Decree Nº 39/2006 of September 27).

10 Within the legal framework for forests and wildlife, distinction goes to Law Nº 10/99 of July 7 (Forest and Wildlife Law) and the corresponding Regulation, approved by Decree Nº 12/2002 of June 6.

11 Within the legal framework for fisheries, see the Fisheries Law (Law Nº 3/90 of September 26), the General Regulation for Maritime Fishing (Decree Nº 43/2003 of December 10), the Inland Waters Fishery Regulation (Decree Nº 57/2008 of December 30) and the Regulation for Recreational and Sport Fishing (Decree Nº 51/99 of August 31).

12 Within the legal framework for mines, see the Mining Law (Law Nº 14/2002 of June 26), the Regulation to the Mining Law (Decree Nº 62/2006 of December 26) and the Environmental Regulation for Mining Activity (Decree Nº 26/2004 of August 20).

13 In the petroleum sector it is worth highlighting the recent approval of the Environmental Regulation for Oil-Producing Operations, through Decree Nº 56/2010 of November 22, similar to that which was drawn up for mining activity, bearing in mind the special care and implications in environmental

environmental standards, in spite of the focus being on the exploitation of the resource and not on the issue of protection and conservation, thus justifying that the emphasis [assento -> acento] be on licensing of the activity.

3.2. Aspects to be harmonised

The main issue which as we understand it is deserving of attention within the effort for harmonisation of the Mozambican juridical-legal framework, is the issue of licensing of activities. If the Environment Law is clear in having enshrined the principle of the precedence of the environmental license in relation to all other licences and authorisations that may be legally required for activities that, due to their scale, nature or location are liable to cause significant environmental impacts[14],the content of the miscellaneous sectoral laws now seems to not be in synch with or to respect this important legal foundation, inasmuch as not only in some cases has it contributed to its weakening, but also in other cases, to the transformation of this obligation into a simple requirement in a way that is stripped of any and all importance whatever.

One emblematic [carismático - ?] example flows from the provisions of the Regulation concerning the Licensing of Industrial Activity, approved by Decree Nº 39/2003 of November 26, which lacks clear harmonisation with the provisions of the Environment Law and of the Regulation concerning the Environmental Impact Assessment Process, in the part that has to do with the process of licensing of industrial operations.

3.3. Legislative gaps or omissions

It is true that Mozambique now possesses a notable juridical-legal framework, with the greatest challenge being constituted by its implementation. However it doesn't cease to be true that there are still some important omissions in the Mozambican legal order, getting translated into matters/issues over which total or partial legislative omission prevails.

---

terms that the surveying, prospecting, use, exploitation and marketing of petroleum and natural gas and their derivatives occasion for the Mozambican state.

[14] See paragraph 2 of Article 15 of the Environment Law.

3.3.1. Agriculture

As is the case of agricultural activity, which is greatly responsible for the environmental problematic at planetary as well as national level (by way of example, see the destruction of the forests and reduction of biodiversity, the exhaustion of underground and surface water resources, the degradation of the soils, erosion, impoverishment [of people??], salt buildup, chemical pollution of the soils and waters due to the use and abuse of chemical fertilisers and pesticides, and the exhaustion of water reserves due to causes flowing from the unregulated use of water).

Accordingly it is urgent to draw up and get approval of a framework law regarding agricultural activity, facilitating the role of the Executive in implementation of the respective policies and strategies. Such a law would establish—amongst others—aspects of a social and economic nature, the principles and basic rules for protection and conservation of the soils, and water resources and biodiversity, likewise establishing a specific and more suitable regime than the overall one concerning environmental impact assessment.

One would seek in such a law to set out the fundamental relationships with concepts like land-use zoning and strategic environmental assessment, which are considered fundamental for reconstruction of the balance which has been undone between humanity, territory and natural resources.

This law could also contemplate livestock-raising activity, given the close relationship between the two areas, with one assuming it would be [?] the Law of Agricultural and Livestock-Raising Activity. Even though in terms of livestock-raising activity, regulatory legislation exists which contains some environmental standards, these are far from constituting the proper level of protection[15].

[15] See the Animal Health Regulation (Decree Nº 26/2009 of August 17).

As an alternative to the drawing up of the above-mentioned law, and as Emílio Tostão recommends in the present publication, an Environmental Regulation for Agricultural Activity may be drawn up, synthesising the more than forty legal instruments that regulate environmental affairs in the agriculture sector, thus contributing to their harmonisation, on the one hand, and facilitating reference to them and their implementation on the other hand.[16]

3.3.2. Conservation

In addition to the issue of the need to "green" agricultural activity, it is important as well to follow up on the work which has been started with the drawing up and approval of the Conservation Policy [Politica]. The drawing up of a Conservation Law would define the legal foundations for a real system/network of conservation areas, creating new categories and re-categorising the current ones, in addition to carefully defining the respective legal system [original ≠ a properly-formed sentence]. In addition to this important aspect, one must not neglect conservation needs outside of the protected areas, in such a way as to prevent the possibility of the territories not taken in by the national system/network becoming a "no-man's-land"—spaces for the exercise of free will, devoid of general or particular biodiversity protection measures.

3.3.3. Environmental Health

Environmental health constitutes one of the topics of the present publication (Environmental Health: the Main Gaps and Challenges [overall title as translated for the book?]). As the chapter authors indicate, in Mozambique the emphasis [assento tónico] has been on water and sanitation, and to some extent on foodstuffs and hygiene in general[17],to the detriment of other

---

16 TOSTÃO, EMÍLIO, Análise Ambiental do Sector da Agricultura.

17 See the Regulation concerning Hygiene Requirements for Eating Establishments (Ministerial Order Nº 51/84 of October 3) and the Regulation concerning Hygiene [Higiénico] and Sanitary Requirements in the Production, Transport, Marketing, Inspection and Oversight of Foodstuffs) (Decree Nº 15/2006 of June 22).

fundamental environmental components, namely the air, soil and biotic environment. Even as regards water and sanitation, one notes unequal treatment, with prevalence for the issue of water over the theme of sanitation—the latter being one of the country's greatest Achilles' heels.

The authors have underlined the institutional weaknesses in terms of solid waste management (with only Maputo and Beira having taken important steps forward in the conceiving of plans) and of waste water treatment (there existing just one single treatment plant in the country, more specifically in Maputo). The legal order foresees standards which are excessively generic—in the case of solid waste management—and inadequate/insufficient ones as regards treatment of waste water.

Thus it will undoubtedly be imperative to strengthen the legal framework concerning environmental health, at all times within a perspective of ensuring its complete implementation.

3.3.4. Energy

In the energy sector, Law Nº 21/97 of October 1 regulates the activity of production, transport, distribution and marketing of electrical power. This Law saw regulatory follow-up through Decree Nº 42/2005 of November 29 (which approved the Regulation Establishing Standards in reference to the National Electrical Power Grid) and Decree Nº 48/2007 of October 22 (which approved the Regulation of Licences for Electrical Installations). This Law is somewhat out of synch in relation to the great challenges faced in light of the race toward bio-fuels, as well as of the so-called renewable energy sources. To this end, the Government has approved two important policies—the Bio-Fuels Policy and Strategy (approved by Resolution Nº 22/2009 of May 21 (Approving the Bio-Fuels Policy and Strategy) and the Policy for Development of New and Renewable Energy Sources (approved by Resolution Nº 62/2009 of October 14). What is missing now is to prepare the necessary legal arrangement, which may be via approval of a new

Energy Law, or else—an easier solution—through the preparation of regulations to be approved by the Council of Ministers.

3.3.5. Construction

If there is a sector that has been condemned to oblivion in legislative questions, that sector is construction. In reality the old General Regulation for Urban Buildings remains in effect (as approved by Legislative Instrument Nº 1976 of March 10, 1960), and is quite out of synch with the challenges in moving to sustainability that are raised for this sector of activity. The Regime for Licensing of Private Construction Works (Decree Nº 2/2004 of March 31) had little to say in relation to environmental protection.

As such, it becomes necessary to pass a legal instrument regulating construction activity, ensuring the necessary environmental sustainability, through the contemplating of norms defining the kind of raw materials, promoting recycling and reuse of materials, adapting the buildings to the climate change of which Mozambique is the target and ensuring energy saving, as well as water self-sufficiency (including the harvesting of rainwater and the reuse and recycling of water).

4. Legal framework concerning land-use zoning

The rational and balanced organisation of the space of the national territory, to which the challenge of land-use zoning corresponds, is today seen as one of the fundamental preconditions for achieving sustainable development, with its economic, social and environmental dimensions.

Land-use zoning has finally been the object of legislative attention, bearing in mind its enormous importance in the organisation of the various socio-economic activities within the territorial space and looking to safeguard environmental values, resulting in approval of the

Land-Use Zoning Policy [Politica] (approved by Resolution Nº 18/97 of May 30), of the Land-Use Zoning Law (Law Nº 19/2007 of July 18), of the respective Regulation (approved by Decree Nº 23/2008 of July 1), and most recently, of the Directive concerning the Process of Expropriation for purposes of Land-Use Zoning (Ministerial Order Nº 181/2010 of November 3).

These legal instruments considerably strengthened the principles and rules set out in legislation concerning land (consolidating security of land tenure, particularly on the part of the most underprivileged population groups) and of [?] the environment (land-use zoning constitutes an important tool for protection of the environment, of each one of the respective components and of natural resources).

It is through the application of the land-use zoning legislation that one achieved the proper bringing into line, achievement of consensus and harmonisation of the various interests regarding the physical territorial space. But it is through this proper application that ideal conditions get created to attain the much-vaunted sustainable development. Simon Norfolk and Paul de Wit draw our attention in the present publication to the important role of land-use zoning within the efforts for development and in fighting poverty.[18]

One important aspect relates once again to the poor indices of application of this legal framework. Of the four levels of intervention foreseen—national, provincial, district and municipal—the land-use zoning exercise has been carried out solely in a few municipalities, through the drawing up of Urban Structure Plans (PEU). The other levels have been neglected, notwithstanding the importance that the land-use zoning instruments would have in the prevention and resolution of some of the most serious problems that are recorded in management of the physical space and respective natural resources.

[18] NORFOLK, Simon/WIT, Paul de, Desafios para a Planificação Territorial em Moçambique. [original in EN?]

Which is to say, the Government's Five-Year Plan for 2010 to 2014 opted for the urban land-use zoning efforts to be centred at urban level (cities and towns) and in the coastal area, postponing the preparation and presentation of the National Territorial Development Plan (PNDT) to Parliament for approval, this being an instrument directed to defining and establishing the perspectives and the general guidelines that ought to guide the use of the entire national territory and the priorities for interventions on a national scale. Undertaking this Plan would contribute greatly to solving some of the most serious and delicate problems that are found within the territory, mainly as regards the conflict between sector policies. Along the same line of reasoning, there would be a need to move forward to the undertaking of the Provincial Territorial Development Plans (PPDT), which reproduce at provincial scale the concerns raised at national level, and consequently the District Land Use Plans (PDUT), which are fundamental instruments for the proper and balanced land-use zoning of the districts.

However, implementation of the legislation for land-use zoning requires not only its proper handling within the Government's Five-Year Plan, and consequently within the Economic and Social Plans, but also the required budgeting exercise. And on this aspect, as Simon Norfolk and Paul de Wit demonstrate, in the period taken from 2007 to 2009 the funds from the State Budget allocated to the [??] environmental sector in general—and to land-use zoning in particular—have not been encouraging.

5. Implementation as the biggest stumbling block

The greatest weakness has to do in fact with the level of application of this environmental legislation in Mozambique, which in fact a generalised problem. This is the greatest Achilles Heel of environmental governance.

One of the causes of the low indices of implementation resides in the form as such in which the institutional framework is structured. We highlight this not to provoke review/revision of the functions and powers of each body with powers in the environmental area, but rather looking to maximise the existing means and resources and develop closer mechanisms for co-operation

and articulation, and to ensure greater presence on the ground. [Original isn't a properly-formed sentence.]

One of the greatest examples which may be presented as evidence of the dysfunction in implementation of the laws, has to do with the non-application of part of the fees for licensing of exploiting of resources, in support to the inspection activity. In the greater part of the legislation consulted, there was no concern to make subject to regulation the application to be given to the monies collected from the fees applied, including the inspection component. In practical and simple terms, the exploiting of resources gets licensed, but in relation to which there is no institutional capacity to undertake inspection.

Special care should be given to the implementation mechanisms for the above-mentioned legal instrument, the non-existence of which constitutes the true Achilles Heel within the Mozambican legal order. The laws ought to be drawn up to solve problems, never in order to do nothing more than [nunca para tão somente para] to show that they exist. There is work that may be undertaken with the laws themselves, getting them to include mechanisms to streamline their implementation, but much more ought to be done in extrinsic terms [?] in order that they may actually produce legal effects. In that sense it becomes crucial to strengthen the existing systems and models of oversight, investing more and better in oversight of the way that exploitation of the various natural resources has been conducted.

6. Conclusions

As the main conclusion we can state that Mozambique possesses a politico-legal framework for the environment which is of notable value, starting with the Constitution of the Republic, which dealt like none of its predecessors did with the environmental issue, passing through the Environment Law of 1997 and respective regulations, and culminating in the now rich and varied sectoral environmental legislation.

This picture is reinforced in a significant way with approval of the Land-Use Zoning Law and respective Regulation, with one foreseeing a significant set of environmental principles and standards, as well as an array of land-use zoning instruments on a national, provincial, district and municipal scale, which if carried out in a rigorous way, with a proper method, diligence and openness and subsequent implementation, would contribute greatly to solving a large part of the environmental problems that occur in Mozambique.

However there are still some bases [?] in the Environment Law to be regulated, as well as various matters in terms of sectoral legislation. In this sense there is still legislative work to be done in the Parliament and in the Mozambican government.

Lastly, there is a serious problem in implementation of the juridical-legal framework in force, which gets translated into the low indices of application of the laws, with this being an aspect that it is urgent to overcome, through a variety of measures.

7. Recommendations

In terms of recommendations to be left for the co-operation partners within the ongoing work of dialogue and support to the Mozambican State [Estado moçambicanos], we can offer the following:

- Review the national politico-legal framework concerning climate change, bearing in mind that no foundations have been defined within the Environment Law, and that this matter is overly fragmented and dispersed within the miscellaneous pieces of legislation;
- Carry on with the process of setting out of regulations for the Environment Law, filling in the thematic areas that have not yet received proper attention, as is the case of the definition of new environmental quality standards (with highlight to noise), of protection of certain components of biodiversity, of access to

environmental justice [???], of environmental insurance, of the Institute of strict civil liability, of the foreseeing of a legal framework concerning environmental crimes and of the definition of environmental incentives;

- It is likewise important to work on the exercise of harmonisation of the juridico-legal framework, eliminating those contradictions as may exist amongst the various legal instruments;

- Strengthen and improve the handling of environmental questions within sectoral legislation, pursuing the effort which is underway within the water, forests and wildlife, mines and fisheries sectors;

- Draw up a law concerning agricultural activity (or, going further, agricultural and livestock-raising activity), foreseeing important foundations for environmental protection, or alternatively, an Environmental Regulation for Agricultural Activity;

- Draw up a law on conservation, following up on the provisions in the Conservation Policy;

- Draw up a new law on energy, or alternatively, get approval of regulations on bio-fuels and new and renewable energy sources;

- Strengthen the juridico-legal framework concerning environmental health, focussing not only on water and sanitation, but also other fundamental environmental components (air, soil and biotic environment);

- Approve an environmental regulation concerning construction activity, defining norms for energy and water savings and likewise setting out rules for the use of raw materials;

- But the greatest challenge doesn't flow from the improvement of the legal framework as such, but rather from its implementation. To that end it becomes of fundamental importance to rethink the oversight models in force, building on [???] those as are in synch with the reality of the country, which will necessarily continue to imply greater investment in the sector, for the benefit of a State that seeks to be one based on the rule of law.