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**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Initial reports of States parties**

**Mozambique\***

[27 February 2012]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## **I. Introduction**

1. This report by the Government of the Republic of Mozambique covers the period from 1994 to 2010 and arises under the obligation of the States Parties to the Covenant on Civil and Political Rights of submitting reports on the progress achieved in the enjoyment of the rights provided for in the Covenant pursuant to article 40.
2. The report is divided into two parts. The first part provides a brief Framework on the country with regard to its geographic location, history and political developments, and also on its demographic composition, culture and religion.
3. Yet in this first part, the report focuses on the country's constitutional Framework, the political, administrative and judicial structure, as well as the ratification of some international instruments and their position within the domestic legal systems and last but not least, it focuses on the cooperation with human rights international mechanisms.
4. The second part focuses on the effective implementation of the rights enshrined in the Covenant, starting with the principles that inform the civil and political rights, and subsequently, the rights and liberties of individuals.

## **II. General information**

### **A. Geographic location**

5. The Republic of Mozambique is located on the African Southwest Coast occupying a total area of 799.380 Km<sup>2</sup>, subdivided into 11 provinces, namely: Niassa, Cabo Delgado, Nampula, Zambézia, Tete, Manica, Sofala, Inhambane, Gaza, Maputo Province and Maputo City. The capital of Mozambique is Maputo City.
6. The country shares a border on the North with Tanzania, on the South with South Africa (Natal Province) and Swaziland, on the West with Malawi, Zambia, Zimbabwe and again with South Africa (Mpumalanga Province). The Indian Ocean is on the East.

### **B. Some historical data and the main political developments**

7. Mozambique, a former Portuguese colony, is a recent State in the community of nations; it saw its sovereignty legitimated as an independent country on June 25, 1975 as a result of the heroic and long lasting resistance of its people supported by several world freedom friendly nations.
8. The 1975 Constitution was based on the proclamation of independence, which although less explicitly incorporated already a set of principles for the respect of universal values of human dignity.
9. Mozambican people are a product of cultural, religious and social diversity in its demographic fabric which emerged during centuries of relations and trade with peoples and cultures from several parts of the World. Nowadays this people assume one and indivisible national identity as a modern nation where different religious, cultural and political systems and values of citizens coexist and interact within the context of pluralism and tolerance.
10. In 1990, a new Constitution was proclaimed leading the country to a new political and economic legal system with the introduction of a multiparty system and market economy. This represented the establishment of pluralistic democracy and a qualitative leap in matters of promotion and protection of human rights.

11. The fundamental basis to put an end to 16 years of destabilization war that dilacerated the country was created in the context of the proclamation of the 1990 Constitution, opposing the legitimate Government of Frelimo with the Renamo Guerrilla. This conflict only ended with the signing of the General Peace Agreement, in 1992 in the Italian capital, Roma.

12. Since the establishment of pluralistic democracy, Mozambique has already held four General Presidential and Parliamentary elections.

13. It should be stressed that the gains of the 1990 Constitution were further deepened with the 2004 constitutional revision. In addition to the extension of the set of human rights values, the Framework of democratic action was extended with the prediction of the provincial assemblies whose first electoral exercise took place simultaneously with the 4<sup>th</sup> General Elections held in October 2009.

### **C. Demographic composition of the population**

14. Demographic data indicate that Mozambique has a population of about twenty one million eight hundred and fifty four thousands inhabitants (21,854 inhabitants)<sup>1</sup>. Children represent about 50 per cent of the total population of the Country.

15. Mozambican population is predominantly rural and its population density varies and the largest being in Maputo City with about 4.509 inhabitants per Km<sup>2</sup> and the lowest in Niassa province with about 9 inhabitants per km<sup>2</sup>. However, the average population density of the country is 27 inhabitants per km<sup>2</sup>.

### **D. Culture and religion**

16. In general, Mozambican culture is based on customs, beliefs, practices and traditional values from each area of the country and from the population group. In the rural area, the population follows, to a large extent, beliefs and traditional cults.

17. The culture is an instrument for promoting the patriotic conscience and national unity. The singing, the dance, the poetry, sculpture painting and forms of cultural expression, had always a very relevant role in the mobilization of the Mozambican citizens in the struggle the conquest of dignity and valorisation of the Mozambican culture.

18. The Country has the Portuguese as official language and a diversity of national languages composed of about 40 native languages. The most spoken national languages are: Emakhuwa, Xichangana, Elomwe, Cisena and Echuwabo.

19. Regarding to religion, a considerable part of the population professes the catholic religion (23.8 per cent) and has followed the religious practices that result from the contact with the exterior. The Muslim religion (represents 17.8) is also predominant, mainly in the north of the country and, especially, in the coastal area. It is important to note that the Constitution of the Republic establishes the principle of secularity of the State in article 12, which establishes the State and religious denominations. It further provides that the religious denominations are free in their organization and in the exercise of their duties of worship, and must comply with the laws of the State.

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<sup>1</sup> Information available in the National Statistics Institute [www.ine.gov.mz](http://www.ine.gov.mz)

### III. Constitutional framework

20. The Republic of Mozambique has a structure based on a constitutional text adopted on 16 November 2004 by Parliament and promulgated by the President of the Republic then in office, on the same date. The Constitution (CRM) became effective on the day immediately after the validation of the electoral results of 2004 General Elections in accordance with article 306 of the same constitution.

21. The current Constitution states that Mozambique is a Democratic State based on the “pluralism of expression, on the democratic political organization, and on the respect and guarantee of the fundamental rights and freedoms of the Human being.”<sup>2</sup>

22. In addition, the preamble of the CRM mentions respect for human rights, when its fourth subparagraph states that "This Constitution reaffirms, develops and deepens the fundamental principles of the Mozambican State, enshrines the sovereign character of the democratic State, based on pluralism of opinion, party organization and the respects and guarantees the fundamental rights of the citizens."

23. The Mozambican constitution has an extensive catalogue of rights, duties, freedoms and fundamental guarantees contained in Title III, that are aligned to the principles of various international human rights treaties to which the country is a State party.

24. Additionally, it should be noted that according to article 43 of the CRM<sup>3</sup>, the constitutional and legal provisions related to fundamental rights are interpreted and integrated in the Mozambican legal system in harmony with the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights<sup>4</sup>.

### IV. Political, administrative and judicial framework

25. Mozambique has a presidential system of governance. Article 134 of the CRM advocates the separation and interdependence of powers and in their proceedings should abide the Constitution and the laws. The exercise of political power is guaranteed by 5 organs of sovereignty, namely: the President, the Assembly of the Republic, the Government, the Courts, and the Constitutional Council.

26. Although the Constitution enshrines the system of separation of powers, it stipulates the mechanism of articulation of powers to secure and ensure the good governance in the context of transparency and impartiality.

27. The five organs of sovereignty exercising the power of the State in Mozambique are all responsible for the protection of human rights within their sphere of competence. The President of the Republic is the Supreme Magistrate of the Nation whereby he guarantees the constitutional order, may request advice on the constitutional legality of a legal act submitted to him by other organs of sovereignty (Assembly of the Republic and Government) to the Constitutional Council, for decision, which can be for promulgation, return for harmonization or veto. Paragraph 2 of article 150 of the CRM states that the elected President of the Republic, in the act of investiture pays the following oath: “I swear on my honour, to respect the Constitution, faithfully carry out the office of President of Republic of Mozambique, devote all my energies to the defence, promotion, consolidation of the national unit, human rights, democracy and the well being of Mozambican People and do justice to all the citizens.”. The Assembly of the Republic is the legislative organ for

<sup>2</sup> Article n°3 the CRM.

<sup>3</sup> It should be understood African Union Charter as African Charter on Human and People's Rights

<sup>4</sup> Although in this article the CRM and the African Union Charter should be understood as African Charter

excellence with the exclusive function of legislating and overseeing the government acts on behalf of the people, and in its functional structure it incorporates the Commission of Legality, Justice and Human Rights, which, among other duties ensures the protection of human rights and the citizens can submit petitions if their fundamental rights are violated. The Government is responsible for formulating and implementing policies in several areas of the executive power that contribute for the welfare of citizens, as well as for promoting and protecting the human rights. The Courts are responsible for the administration of justice under the rule of law, for the guarantee of the protection of the interests of citizen according to the law, for punishing exemplarily any violation of the law and arbitrate conflicts between private and public interests. The Constitutional Council is especially responsible for monitoring the constitutionality of the laws and the acts performed by other State authorities.

28. Mozambique is a secular State based on the principle of separation between the State and religious denominations. However, the different religious denominations are free in their practices and the State recognizes and appreciates that as well as it promotes tolerance.

29. The legal system in force in Mozambique is of a civil nature, legacy of Portuguese law, influenced by the Roman-Germanic legal traditions. Apart from the Constitution, the Mozambican legal system is primarily based on the Civil Code, applied by the judicial courts according to procedures stated in the Code of Civil Procedure.

30. Mozambique is a State of legal pluralism, i.e., the conflict resolution formal mechanisms coexist with the consuetudinary mechanisms, provided that they do not contradict the values and principles stipulated in the CRM, in the context of protection of human rights.

31. The capital punishment is explicitly prohibited under the article 40 of the CRM. It was firstly abolished at the promulgation of the 1990 Constitution and the 2004 revision reiterated this great achievement.

32. The fundamental principles of the administration of Criminal Justice System aiming at guaranteeing the observance of legality and non-retroactivity of the criminal law, unless the new provisions benefit the defendant, are embodied in the CRM. No citizen can be tried more than once for the same crime and CRM guarantees the right to revision of judicial sentences and the respective compensation in case of injustice. Sentences or measures involving deprivation of liberty perpetually or unlimited duration are prohibited by the Constitution. The penalties are not transferable. No sentence will automatically result in the loss of any fundamental right, unless limitations inherent to the condemnation and to the specific requirements of penalty execution. The providence of *Habeas Corpus* is constitutionally guaranteed and the Penal Code also recognizes the principles of *nulla poena sine culpa* and proportionally, in any case, a sentence can be issued beyond the criminal penalties of the crime.

33. CRM guarantees freedom of association and the right for the citizens to associate freely for the purposes deemed appropriate, provided that such association does not imply the disturbance of the established order and welfare of the citizens.

## V. Ratification of international instruments

34. The CRM provides a system of integration for the international law in the national law system. The regional and International instruments, since ratified and published have the same legal value as the infra constitutional laws emanated from the Assembly of the Republic<sup>5</sup>. This implies that all the international instruments of which Mozambique is a

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<sup>5</sup> Numbers (1) and (2) of article 18 of the CRM

Member State apply to all levels of life of the country after the official publication in the Republic Gazette. It also implies that the international rules on human rights can be directly invoked in the judicial entities of the country.

35. Thus, the Mozambican State has made efforts to ratify the majority of regional and international instruments with the aim of providing a wide field for the materialization of the universal principles of human rights, namely:

#### **United Nations and African Union Legal Instruments**

<i>Nº</i>	<i>Designation of the Convention</i>	<i>Year of Rectification</i>
1	African Charter on the Rights and Welfare of the Child	Resolution nº 20/98 of the Cabinet of Ministers
2	United Nations Convention on the Rights of the Child	Resolution 19/90 of the Cabinet of Ministers
3	Convention on the Elimination of All Forms of Discrimination against Women	Resolution nº 4/93 of the Assembly of the Republic
4	International Convention on the Elimination of All Forms of Racial Discrimination	Resolution nº4/83 of the Cabinet of Ministers
5	Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment	Resolution nº 8/91 of the Assembly of the Republic
6	International Covenant on Civil and Political Rights and its Second Optional Protocol, aiming at the abolition of the death penalty	Resolutions nº 5 and 6 of the Assembly of the Republic
7	African Charter on Human and Peoples' Rights	Resolution nº 10/88 of the Assembly of the Republic
8	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	Resolution nº 28/2005 of the Assembly of the Republic
9	Convention on the Rights of Persons with Disabilities and its Optional Protocol	Resolution nº 29/2010 and Resolution nº 30 of the Assembly of the Republic

## **VI. Cooperation with the international human rights mechanisms**

36. Mozambique has been cooperating with several international and regional mechanisms. The Mozambican State is a member of the United Nations, African Union, Commonwealth, SADC, CPLP and PALOPs. In all these supranational organizations, the country has endorsed the recognised principles of promotion and protection of human rights.

37. The basis for cooperation between the Republic of Mozambique, regional and international system of Human Rights, is, as already mentioned, the constitutional framework, in the country's compliance with the Universal Declaration of Human Rights, the African Charter on Humans and Peoples' Rights and other regional and international Human Rights Instruments.

38. On this basis, Mozambique has received visits from holders of special procedures, both from the African Union and from United Nations, including special rapporteurs, when requested.

## VII. Information on articles 2 to 27 of the Covenant

### A. Principle of universality and equality (arts. 2 and 3)

39. According to the Covenant, the principle of universality and equality means recognizing rights enshrined therein without discrimination based on race, colour, sex, language, and religion, and political option, national or social origin.

40. It also means that member States should ensure the equal enjoyment of civil and political rights enshrined in the Covenant for men and women.

41. “In the Republic of Mozambique, this principle is clearly expressed in article 35 of the CRM which states that: “all the citizen are equal before the law, enjoy the same rights and are subject to the same duties, regardless of colour, race, sex, ethnic origin, place of birth, religion, education level, social status, marital status of the parents, profession or political option.”

42. Under article 36, men and women are equal before the law in all political, economic, social and cultural spheres”.

43. The principle of universality and equality in Mozambique informs most of the Governance instruments, which aim at the human development and are guided by principles of universality, equality, legality, among others. For instance, the different five-year Government Plans covered by the period of this report express, among other priorities, the political will to coordinate, provide and promote a gender approach in the definition, the planning and implementation of development sectoral programs, and the continuing of efforts in the implementation of the commitments made by the government in relation to gender issues. Moreover, the Action Plan for Poverty Reduction (PARP) contains guidelines of the Government actions in a short and middle term.

44. Concerning the effective achievement of gender equality, many actions have been and are being undertaken.

45. Thus, in 1999, at the level of the government structure, the Ministry of Women and Social Action was established. In various Ministries at the central level, as well as at the provincial directorates, gender units were established and focal points were appointed. In the districts, there are Health Services, of Women and Social Action are directly responsible for this area at the level of local governments.

46. Furthermore, Gender Policy and the Implementation Strategy were approved. This is a document which aims at developing in an integrated manner, the main action lines, in order to promote gender equality, respect for the human rights and the strengthening of the participation of women in the development of the country.

47. The Mozambican State has been strengthening the institutional mechanisms for the advancement of women, in the context of effective guarantee of equal rights and opportunities between men and women.

48. In this context, the establishment of the following mechanisms should be highlighted:

- The National Council for the Advancement of Women, which is the inter-sector coordination, with the main objective of promoting and monitoring the implementation of policies and programs approved by the Government in the areas of women and gender. The Council is composed of members of the Government, non-governmental organizations or associations, religious denominations, trade unions and private sector.

- The Parliamentary Committee on Social Affairs, Gender and Environmental, with the responsibility of integrating issues of environmental protection and gender equality in Parliamentary proceedings.
- The office of the Parliamentary women, which aims to create, among others, a space for so that the connection between parliamentary women and women's organizations can take place and that gender issues and poverty reduction can be integrated in the decisions of the Assembly of the Republic.
- The Network of Women Ministries and Parliamentarians, non partisan forum where women who are or had held the position of a Minister or a Parliamentarian can exchange ideas and set strategies to ensure greater participation of women in decision-making processes and in the development of the country.
- The Gender Coordination Group, it is a forum integrating development partners, civil society and the government where issues related to gender are decided.

49. Regarding the Mozambican legal framework on promotion of the women's human rights, there is a wide legislation which was passed, with emphasis on:

- Law no. 10/2004 –The Family Law, in which measures to eradicate stereotypes and discriminatory practices were introduced by approving equal treatment in the family relationships, such as, the marriage age of 18 years for both girls and boys. In this law, the figure of head of the family has been replaced by family representation, meaning that the family can be represented indiscriminately by either spouse. Moreover, a married woman can now register her children without the presence of the husband, which was not allowed in the previous legislation.
- Law no. 19/97, Land Law which gives equal rights to men and women regarding the land use and benefit, including the rights of succession and title.
- Law no. 23 /2004, Labour Law, which calls for equal rights for both the sexes, regarding equal treatment, as well as remuneration and career progression. In this Law, the specific condition of the working mother is protected, extending the period of maternity leave from 60 to 90 days and a specific time for breastfeeding. The law prohibits the dismissal without just cause during the pregnancy and one year after the childbirth. The law provides punishment for sexual harassment in the workplace and out of it and for the first time; it has introduced one day paternity leave, every two years, to be enjoyed immediately the day after the child's birth.
- Law no. 29/2009, Law on Domestic Violence Practiced against Women, which states the prevention and punishment for the offenders as well as the legal protection and assistance to victims of domestic violence.
- Law no. 6/2008, Law on Prevention and Fight against Trafficking in Persons, Especially Women and Children, with the aim of addressing a global problem to which Mozambique is not immune, affecting especially women and children.

Still in this area and particularly in the efforts to review discriminatory laws, the Commercial Law, the Code of Registration and Notary were revised and the Law of Succession in the process of revision.

50. In the wake of the elevation of the women statute, especially in the governing bodies, and public administration, efforts have been made in order to gradually overcome the gender imbalance, especially in the Government and Parliament.

51. At the parliamentary level, women now represent 40 per cent of the 250 Members of the Parliament. It should be noted that in 1997 the percentage of seats held by women was 28 per cent.

52. Women's representation in the legislative organ in Mozambique is one of the highest, not only in Southern Africa, but in the World in general and represents the fulfilment of one of the Government commitment made by the Government in the 1997 SADC Gender Declaration to achieve up to 2005 the goal of 30 per cent of women in the political decision-making framework.

53. At the Government level, it should be noted that, in the period under review, the position of Prime Minister has been occupied by a woman and currently the country has eight women occupying the position of Ministers, four Vice-Ministers, four Permanent Secretaries and three Province Governors.

54. Although greater representation of women in the decision-making bodies can be observed, in general, there is still a low representation of women in the in decision-making bodies at the local level.

55. As previously mentioned, in 2009, the Government approved a law against domestic violence. As a way of implementing it, the Government, in partnership with several civil society organizations initiated a rigorous public education campaign that includes radio, television, print media, seminars, and other forms of information in order to educate and sensitize the public on domestic violence, especially gender violence, and the provisions of the law against domestic violence.

56. Among the main achievements in the area of combat and prevention against violence based on gender, in addition to the approval of the Law on domestic violence practiced against women, the adoption of the National Plan for Preventing and Combating violence against women (2008-2012) and the drafting of the Integrated Facility Service Mechanism for victims of gender-based violence, currently under discussion can be highlighted.

57. Still with regard to the achievements in the area of prevention and combat against violence, it should be noted that in several sectors, such as police, health and social action, concrete actions were developed, namely:

- Awareness campaigns, trainings and lectures in the communities and schools, in matters related to domestic violence aiming at preventing and combating this problem;
- Establishment of nationwide offices and sections for assisting women and children who are victims of domestic violence in partnership with the civil society organizations that have been providing advice and responding to the needs of the victims. Thus, in total there are two offices in the provincial commands, 21 model offices, 45 offices in several police stations, 119 offices in districts commands, 8 police stations in hospitals, which makes up to 236 offices and sections of assistance to victims of domestic violence across the country;
- Development of several manuals for health students of health sciences institutes and training centres on the integrated services to the victims of violence. These manuals are designed to guide the professionals to better assist the victims of violence in the health services;
- Preparation of information, education and communication materials, for the professionals and public to raise awareness about various forms of violence against women and children and the existing mechanisms for their treatment, which are free, as well as the denunciation;
- Preparation of a module on violence and Human Rights, which is being integrated in the curricula of the training institutions;

- Support to the associations of women heads of households in all provinces of the country in developing income generation activities. These associations benefit from agricultural inputs, vocational training in sewing and projects management;
- Counselling sessions for victims of domestic violence;
- Seminars across the country to disseminate national and international instruments for protection of the human rights of women;
- Seminars to disseminate the National Plan to Prevent and Combat Violence against Women;
- Training sessions for journalists, Community Leaders in matters of violence and Human Rights;
- Establishment of an inter-sector group involving clinical services, psychological, and forensic medicine, to coordinate the organization of services, creation of assistance protocols, data collection instruments, and creation of integrated assistance service. Some of the care standards were published in the Government Gazette, B.R n.2 of II Series of 12 January 2011;

**Challenges:**

- Building of pilot centers of interest for the training of women.
- Establishment of emergency shelters centre for women and children who are victims of violence.
- Review of tools for collecting data on victims of violence assisted in the health units.

58. The progress towards the materialization of equal rights between both sexes, but there are many challenges in this component, namely:

- The strengthening of measures aiming at eliminating all the forms of discrimination based on sex, gender, promoting gender equality and gender equity;
- The expansion and improvement of care service provided to victims of gender-based violence, in all its aspects, taking actions for combating domestic violence.

**B. Principle of legality (arts. 14 and 15)**

59. Under the Covenant, the principle of legality covers equal access to courts, guarantee of presumption of innocence if not tried by a competent court; a person accused of a crime has the right to a lawyer of his choice. If it is not possible to have a lawyer appointed free of charge that means that nobody can be convicted for practices that at the moment of practice do not constitute a crime.

60. Pursuant to paragraph 3 of article 2 of the CRM “The State is subordinated to the Constitution and is based on the legality”. And yet, according to the same article, the limitations of rights, freedoms and guarantees can only take place in cases expressly provided for in the Constitution and these legal restrictions should take a general nature and cannot have a retroactive effect.

61. However, according to paragraph 1 of article 72 of the CRM, there are situations, particularly in the case of a declaration of a state of War, in which freedoms and guarantees of individuals can be suspended or limited.

62. In the Republic of Mozambique, the legality principle also includes that, in the application of the criminal law, the principle *nullum crime sine lege* ( there is no crime

without a law) prevails which means that nobody can be convicted for practices not qualified as crime at the moment of the practice (art. 60, para. 1 of the CRM).

63. With regard to the application of criminal law, this principle means that according to paragraphs 1, 2 and 3 of article 59 of the CRM respectively, “in the Republic of Mozambique everybody has the right to security and nobody can be arrested or submitted to a trial, except in accordance with the law (art. 59, para. 1 of the CRM); the defendants remain innocent until a final decision of a court (ibid., para. 2); no citizen can be tried more than once for the practice of the same crime, or be punished out of the law or with a more severe penalty than that specified by law at the moment of practice of the criminal offence (ibid., para. 3)”.

64. This principle means that in the Republic of Mozambique “no one can be convicted for an act that is not considered crime at the time of practice (art. 60, para.1 of the CRM); the criminal law only applies retroactively when it benefits the defendant (ibid, para. 2)”.

65. With regard to penalties, this principle means that: “penalties or measures that restrict liberty as a matter of life or unlimited or as an undefined term are prohibited (art. 61, para. 1 of the CRM); and that penalties are not transmissible (Ibid., art. 61, para. 2); and that no penalty involves the loss of any civil, professional or political rights, unless subject to any limitations inherent to the meaning of condemnation or requirements of the execution (ibid, para. 3)”.

66. With regard to access to the courts, paragraph 1 of article 62 of the CRM states that “the State guarantees access to the courts for the citizens. The defendants have the right to legal assistance and legal advice”.

67. In order to improve the effectiveness and efficiency in the delivery of justice services, a Centre for Legal and Judiciary Training was established (CFJJ), a State institute under the Ministry of Justice. Since the beginning of its activities in 2000 up to December 2010, 12 courses for the admission of both the Judicial Magistracy and public prosecution were held and about 300 magistrates were trained.

68. In addition to the entry and training courses for the magistracy, the Centre for Legal and Judicial Training offers other courses, namely: Registrar and Notaries courses, Courses for the Technicians of for the Technical Assistance and Legal Support Institute (IPAJ), courses for Officers of Justice and Assistants of Officials of Justice.

69. In the case of magistrates, they have been exposed to trainings on several matters related to human rights. In 2009/2010 they were trained on several courses related to the jurisdiction of children. Yet in 2010 the National Colloquium on children rights was organized on which the target group were magistrates of the whole country, but technicians from several institutions were also present. In 2011, the Centre of Juridical Training introduced courses related to human rights, namely: Course on Law of Inheritance, Course on Gender and Equality of rights and a Course on Human Rights.

70. It should be also noted that, the building of Palaces of Justice in some districts of the country was launched, a concept that brings together under the same space, all the areas which contribute for the judicial process which can facilitate access to justice for the citizens, before considered inaccessible due to the distance between the institutions of justice.

71. On one hand, trainings/capacity building courses for Judges and Community Leaders were undertaken. Judges and other actors of the informal justice were elected with the aim of performing an informal/community justice more effectively capable to complement the actions of the formal justice.

72. On the other hand, in order to ensure a legal support, the State created the Institute for Technical Assistance and Legal Advice with the function of providing legal support and judiciary assistance to the citizens who are economically underprivileged.

73. With regard to the cases assisted and in comparison with its annual performance, in 2009, 39.998 cases were assisted. In 2010, 53.184 cases were assisted which represents for the year 2009, an increase of 32, 97 per cent (13.186 cases).

74. With regard to the national coverage, it should be noted that the Technical Assistance and Legal Advice Institute satisfactorily covers the whole national territory. For this purpose, delegations in all province capitals have been institutionalized. In terms of districts coverage, the institute was present in 81 districts in 2009, from which, 16 were ambulatory and 65 in physical coverage, representing 60.74 per cent of the national territory. In 2010, 111 districts were covered with the establishment of more 22 districts compared to 2009, which represented a growth of 24.72 per cent.

75. With regard to other constitutional guarantees, it should be observed that in Mozambique, the law should have retroactive effects when it benefits citizens and other legal entities, according to article 57 of the Constitution.

76. It should also be pointed that the citizens can appeal for the *habeas corpus* in case of unlawful prison or detention, according to article 66. In addition, paragraph 1 combined with paragraph 3 of article 67 of the CRM stipulates that extradition may take place only by court order and it is not allowed when dealing with crimes correspondent to death penalty or life imprisonment in the requesting State. The protection of the right to life is established here.

77. The right to demand compensation for damages caused by the violation of fundamental rights, under article 58 of the Constitution is also guaranteed.

78. In accordance with paragraph no.2 of article 58, the State is responsible for the illegal acts committed by its agents in the exercise of their duties, which means that they are not exempt from complying with the law.

79. The Constitution in article 69 provides for the possibility for a citizen to contest the acts that violate the rights therein provided for. To do so, pursuant to article 70, the citizens have the right to appeal in case of violation of their rights which are constitutionally recognized.

### **C. Right of people to self-determination (art. 1)**

80. The right to self-determination in the provisions of the covenant means the prerogative of a people to freely determine its political status and freely ensure its economic, social and cultural development.

81. Under article 1 of the CRM: “The Mozambican State is independent, sovereign, democratic, and of social justice”.

82. The sovereignty lies in the people, that is, this people has an active role in the building of the social and economic policy of the State through the universal suffrage to choose their representatives.

83. With regard to self-determination of peoples and within the principle of national reconciliation and harmonization of the Mozambican people’s lives, the law no. 15/92 October 14 was approved, which amnesties crimes committed against the security of people and the popular State. Law no. 2/79 March 16 and on the law no. 1/83 of 16 March amnesty the crimes against the security of the State provided for on the law no. 19/91 of August 16 and military crimes provided for on the law no. 17/87 of 21 December.

84. The cultural and social right in the Republic of Mozambique is regarded as a fundamental right enshrined in paragraph 1 of article 94 and expresses the right of scientific, technical, literary and artistic freedom.

85. Mozambique, as many other countries, adopts comprehensive cultural policy in order to boost the achievements and the cultural reflections in the country. The promotion of the cultural policy in the country is one of its key objectives which aims at ensuring that the different social strata, in which harmonious development and the economic and social factors promote the national coexistence, giving to each Mozambican the sense of identity, solidarity and belonging to the nation, regardless of the diversity of ethnical, linguistic, political, social or religious origin.

86. At the institutional level, the Ministry of Culture has the function of coordinating all the actions related to social and cultural development. This institution, in partnership with other State institutions such as the Ministry of Justice, Ministry of Women and Social Action, and with some NGOs, such as UNESCO, UNFPA promote a greater mainstreaming of the cultural perspective in the plans and inherently human development depends largely on the level of community involvement, and the integration of traditional and formal systems, an approach that includes social and cultural dimensions.

87. Precisely in the final phase of implementation, a joint programme for strengthening creative cultural industries and inclusive policies in Mozambique, funded by the Spain Millennium Development Goals Fund was established.

88. The objective of the program was, on one hand, to protect the work of the creator and on the other hand, to guarantee that the districts development plans have a social and cultural approach. As a result of the implemented actions, there was an:

- Approval of the Law of Copyright and Related rights;
- Establishment of a system of cultural information, a digital platform that enables the sharing of information on arts and culture at national and international level;
- Strengthening of the handcraft sector through training, technical assistance and support to development and placement of the product;
- Development of a model/guide for the integrated approach of culture, gender and human rights in planning.

89. The great challenge in this area is to continue developing the approach on the socio-cultural aspects and the fusion or integration of traditional and formal aspects as a means of ensuring sustainable development.

#### **D. Right to life and prohibition of torture and slavery (arts. 6, 7 and 8)**

90. Under the Covenant, the right to life includes the prohibition of death penalty and genocide.

91. The prohibition of torture, penalties or cruel treatments, apart from the literal sense, also comprises, in the terms of the covenant, the prohibition of submitting a person to medical or scientific experiments without authorization.

92. Under paragraph 1 of article 40, of the CRM “every citizen has the right to life and to physical and moral integrity, and cannot be submitted to torture or cruel and inhuman treatments”.

93. The right to life is also protected in paragraph. 2 of the same article specifying that in Mozambique there is no death penalty.

94. The right to life and physical integrity is based on the recognition and promotion of rights inherent to the fundamental freedoms of citizens and to the need for defining concrete actions for the prevention and eradication of all forms of violence.

95. In this sense, cruel treatment, excessive use of power, summary executions, whether they are judicial or extrajudicial, the torture, the slavery, the trafficking of people are not

institutionalized, that is, recourse to them does not constitute Government policy, precisely because they constitute a serious violation of human rights..

96. Recently, cases of excessive use of power, torture, extra-judicial executions and other forms of violation of human rights have been reported in the country by the authorities of law and order (police and prison guards). There are also cases of people who do justice by their own hands, lynching supposed criminals.

97. But as mentioned above, the use of these practices, whether by the population, whether carried out by agents of law is considered as a crime because all of these are subject to the law and to the strict respect of human rights, as stipulated in the Constitution.

98. The violation of human rights by the referred law agents will raise the liability to penal or administrative responsibility. In the case of police and correctional officers, they are also subject to their disciplinary statutes. Thus, all cases committed by the agents of law and order, including correctional agents were submitted to judicial channels and deserved the treatment stipulated by the law. The cases proven by investigation result in civil and criminal liability for the officers involved. It is also important to clarify that, as a rule, such processes are monitored by the victims' relatives.

99. Furthermore, all the agents of law and order acting in this State, along their professional career, receive trainings and specific instructions on the respect for the human rights and foremost on the right of life and security during their activities. These professionals are aware of the use of force and of the constitutional and legal principles related to the adequacy and necessity to proportionality.

100. In the case of the prison staff, they received training related to: the application of imprisonment measures and human rights, the main national, regional and international mechanisms of protection of the rights of people deprived of liberty, as well as behavioural issues, and management of interpersonal conflicts and relationships.

101. The Government has made efforts to eliminate the practice of torture in the Country. It has been pointed out that the Government itself publicly declares the cases of tortures in prisons and the measures taken against its officials even those that have resulted in the expulsion, criminal and disciplinary procedures against the guilty officers.

102. The prohibition of slavery, under the provisions of the Covenant, covers the prohibition of the slave trafficking, prohibition of execution of compulsory labour which is not legally recognized.

103. Pursuant to article 84 of the CRM, work constitutes right and duty of every citizen who has the right of free choice of profession. Paragraph 3 of this article prohibits compulsory labour, except the work done in the context of the penal legislation.

104. In Mozambique, some of these forms have been related to people trafficking, where the victims, mainly children, girls and teenagers in the rural area are lured with trainings and work in the cities and in the neighbouring countries, often with the complicity of family members, but ending in contemporary forms of labour and sexual slavery.

105. In 2008, and as previously stated, the Mozambican Government approved the Law no. 6/2008, of 9 July, which criminalizes people trafficking especially of women and children. This law has already been used to judge and condemn people for this kind of crime, and in 2008 some cases were prosecuted with convictions. It is also important to mention that a brigade specialized in the trafficking of human beings was established. This brigade works at the National Directorate of Criminal Investigation and coordinates with the offices and departments of assistance for women and children who are victims of violence.

106. Therefore, it has been shown that the State has stepped up efforts to protect the right to life, ranging from the introduction of reforms in the sector of justice, the criminalization

of people trafficking being one of the examples in order to improve public safety through equipping the police of the Republic of Mozambique with material and human resources.

107. However, despite these advances, there are several challenges in this area, namely:

- Strengthening the prevention and the fight against crime;
- Reinforcing the prevention, monitoring and repression measures and mechanisms of excessive use of power and torture and other cases committed by agents of law and order and that attempt against the citizens' physical integrity;
- Establishing strategies to reduce lynching;
- Promoting the training of the agents of law and order on human rights issues;
- Ratifying the additional protocol to the Convention against Torture;
- Strengthening the implementation mechanisms of the Law on Prevention and fight against the trafficking of human beings as a way of reducing slavery, servitude and forced labor cases;

#### **E. Right to liberty and security of person (arts. 9 and 10)**

108. Under the covenant the right to freedom and security of person includes the right not to be arbitrarily arrested and deprived of freedom for any reason other than those prescribed by law. This right also means treating persons deprived of their freedom with humanity and respect.

109. In the Republic of Mozambique, this principle, whose content is the same as that of the Covenant, is enshrined in article 59 of the CRM, pursuant to which: " 1. In the Republic of Mozambique everyone has the right to security, and no one can be arrested and submitted to judgment except under the Law. 2. The defendants are presumed innocents until the final decision of the Court. 3. No one can be judged more than once for the same crime, neither be punished nor be punished with a more severe penalty than that provided in the law at the time of the criminal offence".

110. Thus, in the context of protection and safety, it should be stressed that it is the role of the police and the prison systems to ensure the enjoyment of the right to freedom and safety.

111. The Police of the Republic of Mozambique was created by the Law no. 19/92 of 31 December, and its function, under paragraph 1 of article 254 of the Constitution, is to guarantee the law and order, safeguard security of persons and property, public tranquility, respect for the democratic rule of law and strict observance of fundamental rights and freedoms of citizens. In the observance of the multiparty principle, paragraph 2 of the same article stipulates that the Police is nonpartisan.

112. Aiming at modernizing the police, among other actions, Decree No 24/99 of 18 May was passed, establishing the Police Sciences Academy (ACIPOL) and the Police of the Republic of Mozambique Strategic Plan 2003-2012 was developed (PEPRM). ACIPOL's mission is to provide professional and intensive training of the police officers, in the form of higher level courses of 3-4 years, as well as the continuous training of the corporation's senior officers. In its curricula, ACIPOL has included modules on human rights.

113. Following the implementation of one of the strategic objectives of the Police of the Republic of Mozambique Strategic Plan, in 2001, the Ministry of Interior, which oversees the police, launched an initiative to build relationships with the communities to engage them in fighting against crime and promoting social peace. As a result of this effort, Communitarian Police Councils have been established, and by 2005 there were already about 1125 of these organisms throughout the country.

114. Mozambique is part of the Southern African region and in this context the Police of the Republic of Mozambique (PRM) is part of the regional police called (SAPCCO) which has developed a code of conduct for its members with regard to performance and compliance with human rights to which the country is signatory.

115. On the other hand, when the guarantee of security is concerned, the prison system should be looked at due to the fact that it constitutes one of the pillars of the administration of criminal justice in Mozambique. This was one of the sectors whose evolution to adapt to the new political and historic context dictated by the 1990 Constitution and whose transition from a situation of war to peace was considered slow.

116. However, the Mozambican State in recognition of these facts undertook a reform process initiated in the late 90s supported by international partners such as UNDP, Ireland, Portugal, and the European Union, among others, that led to their unification in 2007.

117. Despite the fact that the progress within the new political and historical context is considered to be slow and the legislation that governs the sector is outdated, that is to say, it dates back from 1936 as a legacy of the colonial past, with the entry into force of the new Constitution the organizational advances under legal framework were verified:

- The approval of the Policy of Defense of Legality and Justice (Resolution of the Council of Ministers No. 16/2001 of 24 April) that emphasizes the correctional treatment approach (respecting the dignity of the individual) rather than the punitive treatment based on confinement in cells.
- The approval of the Prison Policy and its Implementation Strategy (Adopted by Resolution No. 65/2002 of 27 August, the Council of Ministers) which deepens the provisions of the Police of Defense of Legality and Justice and accurately defines the prisons' mission; and
- The unification of the prison system derived from the establishment of the National Prison Service (SNPRI) under the Ministry of Justice as a result of the implementation of the Prison Policy.

118. Despite these gains, it is a fact that the conditions of Prisons and the Detention Centers still have some problems, even after some improvements have been made in certain prison centers. The main symptoms of these problems are noted in the super-high rates of internment that come to be close to 300 per cent, i.e., three times more than the designed capacity. For example, the largest prison in the country, the Maputo Central Prison, hosts over 2,300 prisoners for an installed capacity of 800. The problem of over- imprisonment leads to the exposure of prisoners to various infectious and contagious diseases such as diarrhea, cholera, tuberculosis and HIV / AIDS, as well as other diseases such as malaria.

119. The other problem in prisons is related to the infrastructures. Given the poor economic situation in the country, many infrastructures dating from the colonial period and in some cases some of these have never benefitted from any rehabilitation and consequently they end up having a negative influence on the accommodation of the prison population. However, despite all these difficulties, new detention centers are being built, especially at the district level, and there is an ongoing rehabilitation in jails especially in provincial and regional central prison centers. Equal attention has been given to open detention centers and rehabilitation centers for the youth in conflict with the law.

120. With regard to assistance, general rule prisoners have the right to medical care, to profess their religious worship since they do not disturb the order and discipline, regular visits from relatives and other beloved people, to receive food two to three times a day, to receive information (from newspapers, magazines, books and letters) and the practice of leisure activities and sports. They also have the right to education and vocational training. Prisoners have also benefited from legal support and legal representation by the technicians and IPAJ legal assistants.

121. There are several cases of prisoners whose preventive imprisonment terms were and are largely exceeded<sup>6</sup>, which contributes to the super-internment in jails and the worsening of all the other problems inherent to it

122. It is expected though that alternative penalties to imprisonment, incorporated in the revision proposal to the current Criminal Code already adopted by the Council of Ministers, and which has been deposited in the Assembly of the Republic for appreciation will help to reduce the super-internments in jails.

123. There are various challenges aiming at ensuring the right to freedom and safety, which are as follows:

- Encouraging the denounce of crimes and the collaboration with the police investigation and criminal proceedings;
- Enhancing the technical capacity of the Community Policing Councils;
- Reducing the cases of violation of terms of preventive imprisonment;
- Introducing alternative penalties to prison, such as community service so that the measure of deprivation of freedom shall be applied in case of more serious crimes.

## **F. Right to liberty of movement (arts. 12 and 13)**

124. Under the Covenant the right to free movement literally means that a person has the right to move freely and establish residence in the place of his choice within the territory of the State. It also means that the foreigner who is legally in the territory of the Member State may only be expelled by justifiable judicial decision.

125. In the Republic of Mozambique, this right is safeguarded in article 55 of the CRM which specifies that: "(1) every citizen has the right to establish residence anywhere in the country; (2) All citizens are free to travel inside and outside the national territory, except those legally deprived of this right.

126. In this report, it is important to make reference to the asylum that the country assigns to citizens of other countries and their constraints.

127. The constitutional provision also grants the right to asylum as stipulated in article 20 paragraph 2, under which: "(...) 2. The Republic of Mozambique shall grant asylum to foreigners persecuted because of their struggle for national liberation, democracy, peace and human rights ", and the regional and international instruments on the matter ratified by the Republic of Mozambique constitute the legal basis for recognition of the need for granting asylum and refugee status to foreign citizens and stateless persons by the Mozambican State.

128. Given its strategic geographical position and its policy of good relations and receptivity, Mozambique has been a privileged country for the demand of refugees from conflict zones such as the countries of the Horn of Africa, the Great Lakes region and Zimbabwe. In this context, the Government has been cooperating with the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees and asylum seekers. In the operational area, Mozambique hosts approximately up to 8737 refugees and asylum seekers from Burundi, Democratic Republic of Congo, Rwanda, Ethiopia and Somalia in the Marratane Refugee Centre in Nampula.

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<sup>6</sup> The terms of preventive imprisonment are ruled in the article 308 of the Code of Penal Process (CPP) and in other separated legislation namely Law 3/97, Known as Drugs Law. The terms of preventive imprisonment range from 20 to 90 days n<sup>o</sup>s 1, 2 e 3 do § 1<sup>o</sup> e n<sup>o</sup>s 1 e 2 do § 2<sup>o</sup> do art.308CPP.

129. Once asylum and refugee status are given, applicants are provided food and medicines, and the right to education for their children and employment are guaranteed.

- In this area, the following are thought to be the great challenges:
- Improving the host and screening of refugees and asylum seekers conditions;
- Creating conditions for the reception of nationals repatriated from the neighboring countries;
- Extending the protection for the refugees.

## **G. Right to recognition as a person before the Law and the protection of intimacy and privacy (arts. 16 and 17)**

130. Under the Covenant all the people are entitled to be recognized as having legal personality.

131. Right to recognition as a person before the law is the ability to acquire rights and incur obligations, and it begins at full birth and with life, under Article 66 of the Civil Code.

132. The full birth with life brings a number of rights starting immediately with the right to life, to a name and nationality and inherently its registration.

133. The CRM has not dedicated a specific provision for the recognition of personality but it governs the right to nationality in relation to its acquisition, loss and reacquisition.

134. It is important to mention that the childbirth registration as a means of identification acquisition and therefore the registration of the beginning of the personality.

135. However, for cultural and financial problems, many parents do not register their children after birth. The Government, with the aim of encouraging civil registration of children, increased the period free of charge for civil registration to 120 days.

136. It is important to mention that fixed brigades for the registration of newborn children have been established in the maternities of health centers. However, there are deficiencies in the registration of children whose mothers give birth outside the maternity ward, or whose fathers are absent.

137. To increase the number of registered children, the Government decided to carry out free of charge registrations campaigns for children, which started in 2005. From 2005 to 31 December 2010 7.025.099 children and 657.209 adults were registered, totaling 7.682.308 citizens registered on campaigns. The registration of adults is justified by the appearance of unregistered parents in the brigades, wishing to register their children. The solution was to register the parents first and subsequently the children.

138. In these campaigns, which occur mostly in rural communities, in addition to registration, information is transmitted in order to sensitize families to give names to the children before birth as a way of facilitating their registration in case of absence of the parents. The same information campaign advises on what should be done in other situations such as that of single mothers in order to register their children.

139. Nonetheless, there are many challenges concerning to registration, with more emphasis on the following:

- Carrying out a study on the possibility of extending the period free of charge civil registration for all births by extending the registration grace period;
- Facilitating access to identity documents

140. Also as part of the rights to personality, it is also important to mention the right to reserve on private life which in terms of the covenant it means that no one can suffer arbitrary or unlawful interference with his privacy, his family, his home, his correspondence nor unlawful attacks on his honor and reputation under article 41 of the CRM every citizen has the right to honor, good name, reputation, protection of his public and private image and respect for his privacy.

141. As a general rule, the domicile and correspondence or other means of private communication are inviolable, except in cases specified by law (art. 68, para. 1 of the CRM).

142. The right to respect for private life is still enshrined in article 80 of the Civil Code.

143. The violation of the rights under the CRM and other rights stipulated in separate legislation may be contested by citizens in accordance with article 69 of the CRM.

## **H. Freedom of thought, conscience and religion (art. 18)**

144. Under the covenant the right to freedom of thought, conscience and religion means freedom of having, adopt or profess any religion of own choice.

145. Mozambique is a laic country. The Freedom of religion is a constitutional guarantee provided for in paragraph. 3 and 4 of article 12 in combination with article 54, both from the CRM in stipulating the following:

“The religious denominations are free to organize and exercise their functions and worship and shall comply with the laws of the State (art. 12, para. 3 of the CRM); The State recognizes and appreciates the activities of religious denominations in promoting a climate of understanding, tolerance, peace and strengthening of the national unity, the spiritual and material welfare of the citizens and the economic and social development (art. 12, para. 4) the citizens shall have freedom to practice or not practice a religion (art. 54, para. 1 of the CRM); No one shall be discriminated, persecuted, harmed or deprived of rights, benefit or exempt from duties because of their faith, belief or religious practice ( art. 54, para. 2) . The religious denominations shall have the right to freely pursue their religious purposes, owe and acquire assets for the fulfillment of their objectives (art. 54, para. 3). The protection of places of worship is safeguarded (art. 54, para. 4); the right to conscientious objection under the Law is also safeguarded” (art. 54, para. 5).

146. Under these terms citizens have freedom to practice or not practice a religion, and no one can be discriminated, persecuted, harmed or deprived of rights, benefit or exempt from duties because of their faith, belief or religious practice.

147. With regard to the religious denominations, they have the right to pursue freely their religious purposes, owe and acquire assets for the fulfillment of its objectives, apart from the protection provided for worship places.

148. It is in this context of religious openness and secularism of the State that more than 500 religious denominations, officially registered in perfect harmony operate.

149. Under the Criminal Law, the Penal Code in its articles 130, 131 and 135 presents some penalties on offenders who disrespect religion or religious worship. In relation to penalties for offences committed in the scope of political parties, the electoral law, Law No. 7/2004 of 17 June regulates such activities, as well as the Law No. 7/91 of 23 January that stipulates the legal framework for the formation and the activities of political parties.

150. Concerning the freedom of conscience, this is not limited only to the activities of religious denominations, it also includes the freedom of citizens to constitute and participate freely in political parties as stated in article 53 of the CRM.

151. However, the CRM and the Law of Political Parties specifically forbid religious groups to organize political parties and political formations to sponsor religious propaganda that could endanger the national unity.

152. The greatest challenge for this area is to establish the teaching of diversity and the history of religion in public schools, with emphasis on the recognition of cultural differences and promotion of tolerance and the assertion of the laic State.

## **I. Right to freedom of expression (art. 19)**

153. Under the covenant, the freedom of expression includes, in addition to the freedom to express opinions, the freedom to seek, receive and disseminate information and ideas of any kind, attentive to the legal restrictions necessary to ensure the rights and reputation of individuals and ensure the national security, health and public order.

154. Under article 48 of the CRM: "(1) All citizens have the right to freedom of expression, freedom of the press and the right to information;. (2) The exercise of freedom of expression, which includes inter alia the right to disseminate their own opinion by all legal means and the right to information, cannot be limited by censorship;. (3) The freedom of press includes, in particular the freedom of expression and creativity for journalists, access to the sources of information, protection of independence and professional secrecy and the right to create newspapers, publications and other media;. (4) In the media of the public sector, the expression and confrontation of ideas from different points of view are safeguarded;. (5) The State shall guarantee the impartiality of the media in the public sector, as well as the independence of journalists before the Government, the administration and other political powers; (6) The exercise of the rights and freedoms referred to in this article is regulated by law, based on the imperative of respect for the constitution and the human being".

155. In Mozambique, the right to freedom of expression and information includes the freedom of expression and creativity of journalists, access to the sources of information, protection of independence and professional secrecy and the right to create newspapers, publications and other media. For this purpose, in Mozambique there is a Superior Council of Social Communication Media, an entity of discipline and consultation, ensuring access to information, freedom of press and the right of broadcast and response. The following are examples of the recent developments and the press freedom in Mozambique: - The licensing of forty-three new private media only in the first semester of 2009, and the development of the Diploma of Press Attachés, which contribute to improve the flow of the Government information to the media.

156. Mozambique has a minimum legal framework for the exercise of freedom of opinion, expression and information, and there is an ongoing process of legal reform in the press sector and broadcasting.

157. However, the expansion and diversification of the Mozambican media in the recent years is again in the sector.

158. Moreover, community radios have been an important alternative in the dissemination of information to rural citizens, but their scope is still limited.

159. The following challenges, among others, are part of this area:

- Expanding the media for the vast majority of Mozambicans;
- Promoting and facilitating access to the information produced by different sectors through the adoption of the Law on access to information sources;

- Expanding and facilitating the exercise of the freedom of speech and press and the access to information by promoting the use of local languages in the programming of radios and televisions through the establishment of quotas for the local content;
- Expanding services for community radios.

## **J. Freedom of association and peaceful assembly (arts. 21 and 22)**

160. According to the covenant, freedom of association and assembly means having the right to associate freely with other citizens, to establish and integrate in unions to protect their own interests.

161. The right to free association and freedom of assembly is enshrined in articles 51 and 52 of the CRM which stipulates as follows: "every citizen has the right to freedom of assembly and demonstration under the law" (art. 51 of the CRM) All citizens shall enjoy freedom of association (art. 52, para. 1 of the CRM). Social organizations and associations have the right to pursue their aims, to create institutions designed to achieve specific objectives and to owe assets for carrying out their activities under the Law (art. 52, para. 2); Armed military or paramilitary associations and those that promote violence, racism, xenophobia, or other purposes that violate the law are prohibited.

162. The disturbance of public order or whatever demonstration that violates the law as well as the crime against security of the State (art. CP 175), the preparatory acts, cf. article 172 of the Penal Code, is punishable by law, and within these there are also other offences such as illegal meetings, armed meetings, the Sedition and whoop, provided for and punished by articles 177, 178, 179 and 180 respectively of the Penal Code.

163. In this regard, paragraph 9 of article 71 of the Penal Code expressly stipulates the security measures to be applied to all those who have been convicted of a crime of association of criminals (art. 263 of the Penal Code), gang or criminal organization, unauthorized Associations (art. 282 of the Penal Code) and Secret Associations (art. 238 of the Penal Code).

164. With regard to the separated legislation on this matter, the Law No. 8 and 9/91 both from July 18 governing the legal forms on in which the assembly, association or demonstration should be ruled were approved.

165. The possibility of revising the legislation governing this matter is regarded as a challenge in this area.

## **K. Right to a family (art. 23)**

166. According to the Covenant, the right to a family means that both men and women have the right to marry and the family formed must be protected. The member States to the Covenant should take measures in order to ensure equal rights and responsibilities of the spouses as to marriage, during and after its dissolution.

167. The CRM does not stipulate the right to a family. However, this right is implicit in the chapter on acquisition of nationality by marriage under article 26 of the CRM, as it stipulates that: "(1) A foreigner acquires Mozambican nationality (man or woman) if they have married to a Mozambican (man or woman) for at least five years"

168. The same thing can be found in article 47 which stipulates the following: "1. Children have the right to protection and the necessary care for their welfare. 2. Children may express their views freely in matters concerning them, according to their age and maturity. 3. All acts relating to children, whether taken by public authorities or private institutions, aim at primarily safeguarding the high interest of the child".

169. In 2004, the family law, Law n ° 10/2004 was approved. This legal instrument is designed to match the existing family law to Constitution of the Republic and to other legal instruments of the international law, thereby eliminating the provisions that sustain unequal treatment in family relations.

170. Article 1 of the Family Law states that: "The family is the basic unit of the society, a socializing factor of the human being and everyone has the right to integrate a family and have one".

171. In accordance with article 7 of the CRM "marriage is a voluntary union and singular between a man and a woman for the purpose of forming a family through the full communion of life." Firstly it appears that it only recognizes monogamous marriages and marriages between persons of different sexes.

172. As a general rule, can only enter into marriage persons over eighteen years, according to paragraph a) of paragraph 1 of article 30 of the family law, exceptionally men and women over sixteen years old can enter into marriage when circumstances of recognized public interest occur with the consent of the parents or the legal guardians.

173. The recognition of religious and traditional marriage giving them equal efficacy as the civil marriage provided that legal requirements have been observed for the their celebration under article 16 was regarded as a very important achievement especially with the approval of the family law in the Mozambican context. Another important achievement with the approval of this law was the recognition of Cohabitation. Thus, Cohabitation reveals for the presumption of maternity and paternity and also with regard to property consequences of the Cohabitants, which, in case of dissolution, the regulatory regime is the communion of the acquired properties, pursuant to article 203 of the Family Law.

174. The greatest challenge in this area is to make people and women in particular aware about the laws that protect their rights in order to gradually reduce the negative cultural practices that violate their rights.

## **L. Rights of children (art. 24)**

175. According to the covenant, the child has the right, without any discrimination, to the protection measures that the condition as a minor requires from the family, society and the State. They also have the right to be registered and to have a nationality.

176. Mozambique has an estimated population of more than 20 million inhabitants, of which about 9 million are aged between 0-18 years. This means that about half of the population of Mozambique are children. This fact implies that half of the population is inherently vulnerable in this regard.

177. Promoting the Rights of the Child has always been one of the constitution's priorities of the country since its establishment. Article 47 of the CRM, as referenced and fully transcribed in the chapter concerning the right to a family, stipulates the right of children to protection and care necessary to ensure their welfare.

178. The Constitution of the Republic (2004) goes further in article 121 stating that: (1) All children have the right to be protected by the family, society and State, in view of their integral development; (2) Children, especially orphans, the disabled and the abandoned have the protection of the family, society and the State against any form of discrimination, abuse and against the abuse of authority in the family and other institutions; (3) the child cannot be discriminated by reason of their birth, nor subjected to mistreatment, and (4) child labor, both in compulsory school age, or in any is prohibited.

179. Furthermore, as part of child protection, the Mozambican government in 2006 adopted the National Plan of Action For Children (PNAC), an instrument that has as one of its priorities the development of coordinated actions to promote the welfare of children,

protecting them from abuse and e sexual exploitation of minors, child labor, trafficking and violence among other problems that threaten the security, integrity , the physical, psychological and healthy development of child and has as its fundamental basis the policies and strategies of the Government, including the Government Five Year Plan, the PARP (Action Plan for Poverty Reduction), the 2025 Agenda and its annual planning instruments: Economic and Social Plan (PES), the State Budget (OE) , Medium Term Fiscal Scenario (CFMP).

180. The development of PNAC has the kind contribution of other State institutions, NGOs and other related entities in favor of the welfare of children and it also ensures that all these plans converge in the framework of goals and objectives of the World Summit for Children, under the country development goals, as well as the Millennium Development Goals (MDGs).

181. Still in the scope of protection of the Child, in 2008 the country approved the Laws on the Promotion and Protection of the Rights of the Child (Law No. 7/2008 of 9 July), the Guardianship of Minors Organization (Law No. 8/2008 of 15 July) and on Prevention and Fight against Trafficking in Persons, Especially Women and Children (Law No. 6/2008 of 9 July).

182. In addition to the existing laws, there is another additional legislation such as Jurisdictional status of minors, the Civil Code, the Penal Code, and the Family Law.

183. To ensure coordination and articulation efforts by various government institutions and the civil society organizations involved in promoting and defending children's rights in the context of the Law No. 7/2008 of 9 July, the Law for Promotion and Protection of the Rights of the Child and the National Plan of Action for Children, the National Council of Child Rights (CNAC) through Decree No. 8/2009, of 31 March, of the Council of Ministers was created.

184. The National Children's Council is chaired by the Minister of Women and Social Action, and it has as its vice president the Minister of Education and Culture and it also includes the Ministers from the Ministry of Justice, Ministry of Health and the Ministry of Youth and Sports. The Council also includes representatives of the civil society organizations and religious entities.

185. It should also be stressed that the Government has signed and ratified international conventions on the Rights of the Child, including the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The development of children and youth associations was also promoted in this regard.

186. The current evaluations of the situation of children in Mozambique show that the country has made positive progress in relation to the development of a legal framework favorable to the implementation of child rights and the development of various policy documents, which have a direct influence in promoting a favorable environment for the welfare of children.

187. In this context, there are remarkable achievements concerning the improvement of the conditions of reception, assistance and integration of the orphans/abandoned children as well as other children in difficult situation and the solidarity actions of the communities.

188. However, all the instruments mentioned above emphasize the principle of the child's right to protection by a family, society and State, in view of their integral development and the need for undertaking measures to discourage acts that violate the rights, dignity and the welfare of the child, in particular, the violence.

189. Moreover, several initiatives have been undertaken by the Government and the civil society to prevent the practice of violence against children in the different environments. Among others, the following advances in the prevention of violence can be highlighted:

- Children's participation in the dissemination of information and awareness campaigns for children who are mobilizing their communities and find solutions to the violence that they are suffering through participating in school clubs and radio programs.
- The adoption of the Code of Conduct of the National Organization of Teachers to prevent teachers from manipulating marks in order to take illegal advantages, from sexually harassing female students, and charging amounts in cash or in kind from the students, parents and guardians, as well as sex favors in return for passing the class or for entering the education system.
- The organization of community debates to prevent sexual abuse through moving units and the projection of films followed by discussions in the local language and the commitment of theatre groups to promote community dialogue on the issue of violence;
- The functioning of 860 Community Committees for Child Protection including violence prevention actions;

190. Despite efforts that have been developed by the country in favor of children since the independence, the situation continues to be characterized by not upholding their rights due to poverty that characterizes the country. Therefore, there are many challenges in this area as follows:

- Ensuring that human rights of children are implemented;
- Ensuring healthy and harmonious physical development of children, focusing on nutritional problems of pregnant women and children;
- Effecting universal access to quality education;
- Ensuring child protection against trafficking and labor exploitation.

#### **M. Right to participate in the conduct of public life affairs (art. 25)**

191. According to the covenant, Mozambican citizens have the right to participate in the public life affairs, to vote and be elected and to have access to the public positions of the country.

192. This is right and duty of the citizen, as stipulated in articles 53 and 74 of the CRM, in which the State promotes and supports the active participation of citizens in the development and consolidation of the country's economy, reads as follows: "(1) All citizens have the freedom to form or join political parties;. (2) Voluntary Membership of a political party derives from the freedom of citizens to join around the same political ideals (art. 53) and (1) The parties express political pluralism if they contribute to the formation and manifestation of popular will which is fundamental to the democratic participation of citizens in governing the country; (2) The internal structure and the functioning of political parties must be democratic" (art. 74).

193. Within the implementation of the Government's Five-Year Plan 2000-2004, Mozambique has adopted a global strategy aimed at galvanizing a new dynamism in the process of governance and democratization, which is called Reform of the Public Sector. This reform was officially launched on June 25, 2001, with the aim of giving a new face in the functioning of public institutions up to 2011. The implementation of this reform was designed in two phases, the first, from 2001 to 2005 and the second from 2005 to 2011.

194. The purpose of the Reform of the Public Sector is to improve, modernize and simplify public services. These services were previously characterized by excessive centralization and bureaucracy, lengthy administrative procedures, the poor management capacity of public policy and human resources, lack of training of human resources, weak

budgetary planning and financial management, lack of solid mechanisms for ensuring transparency and accountability and finally, the existence of corruption.

195. The policy direction for the coordination, management and implementation of the Reform of the Public Sector program in general and the fight against corruption in particular, is of the direct responsibility of the Central Government by means of the Inter-ministerial Commission of the Reform of the Public Sector (CIRES), created by presidential Decree No. 5/2000 of 28 March and chaired by the Prime-Minister.

196. Thus, CIRES has its supporting organ, the Technical Unit for Reform of the Public Sector (UTRESP) established by the Council of Ministers Decree No. 6/2000 of 4 April. This is a permanent technical organ for the implementation of the current program of public sector reform and it aims at supporting the operation of CIRES and ensuring integrated planning, coordination, liaison and monitoring of programs and projects of the reform.

197. As a challenge, the government shall continue to make efforts in order to carry out the reforms of the public sector so that it can provide better services through its closeness to the citizens.

#### **N. Rights of minorities (art. 27)**

198. According to the covenant, people belonging to religious, ethnic or linguistic minorities cannot be denied the right to have their cultural life nor to profess or practice their religion.

199. In Mozambique, the rights of minorities are not expressly provided for in the CRM. However, with regard to the guarantee of protection for the linguistic minorities by means of enhancing and promoting the development of national languages, article 9 of the CRM reads as follows: "The State appreciates national languages as an educational and cultural heritage and promotes their development and increasing use as languages of the Mozambicans' identity."

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