

Implementation of the Convention on the Rights of the Child in Mozambique:

Civil Society Organisation's Comprehensive Supplementary report on the status of Implementation of the Convention on the Rights of the Child in Mozambique

Maputo, November 2018

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

INDEX

ACRONYMS AND ABBREVIATIONS

OVERVIEW

1. INTRODUCTION

2. GENERAL MEASURES OF IMPLEMENTATION

3. DEFINITION OF THE CHILD

4. GENERAL PRINCIPLES

5. CIVIL RIGHTS AND FREEDOMS

6. VIOLENCE AGAINST CHILDREN

7. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

8. BASIC HEALTH AND WELL-BEING

9. RIGHT TO EDUCATION, LEISURE AND CULTURAL ACTIVITIES

10. SPECIAL PROTECTION MEASURES

11. ADDITIONAL INFORMATION

12. ANNEXES

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

ACRONYMS AND ABBREVIATIONS

ACAMO – Mozambique Association of the Blind and Ambliopes

ADEMO – Mozambican Association for People with Disabilities

ACNUR – United Nations Refugee Agency

AMETRAMO – The Association of Traditional Doctors of Mozambique

ASUMO – Mozambique Association of the Deaf

BEBEC ...Inter-Schools Sports Competition for children in the 1st and 2nd cycle

FAMOD – Network of Mozambican Associations for Persons with Disabilities

DICIPE - Integrated Early Childhood Development Strategy

CCPC - Community Committee for the Protection of Children

CDC - Convention on the Rights of the Child

CNAC - National Council for Children

CNAS - National Council for Social Action

CNCS - National Council to Combat AIDS

CNDH - National Commission on Human Rights

COV - Orphans and Vulnerable Children

CREI – Inclusive Education Resource Centre

CSCS - Superior Council of Social Communication

GdM - Government of Mozambique

INE - National Institute of Statistics

INAR - National Institute for Refugee Support

INAS - National Institute of Social Action

INGC - National Institute of Disaster Management

IPAJ - Institute for Legal Judicial Sponsorship

ITIE - Extractive Industry Transparency Initiative

MGCAS - Ministry of Gender, Child and Social Action

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

MICS – Multi Cluster Indicator Survey

MJD - Ministry of Youth and Sport

MMAS - Ministry of Women and Social Action

MINEC - Ministry of Foreign Affairs and Cooperation

MINED - Ministry of Education and Human Development

MINT - Interior Ministry

MITADER - Ministry of Land and Rural Development

MISAU - Ministry of Health

NUMCOV - Multisectoral Nucleus for Orphans and Vulnerable Children

OE - State budget

OSC - Civil Society Organizations

PESS – Strategic Plan for the Health Sector

PIN - National Children's Parliament

PNACOV - National Plan of Action for Orphans and Vulnerable Children

PNACII - National Plan of Action for Children (II)

PNAD II - National Plan for People with Disabilities

RENAMO Mozambique National Resistance Party

ROSC – Network of Child Rights Organisations

SAAJ – Youth and Young Peoples' Friendly Services

SMI – Maternal and Child Health

SSR - Sexual Reproductive Health

SADC - Southern African Development Community

TARV – Anti Retroviral Treatment

UNICEF - United Nations Children's Fund.

URP - Universal Periodic Review Mechanism

Implementation of the Convention on the Rights of the Child in Mozambique: Civil Society Report

Overview

1. In 2008, Mozambique civil society organisations working on children's rights submitted their first supplementary report alongside the country's Second Periodic Report on the implementation of the Convention on the Rights of the Child as assessed by the Committee on the Rights of the Child at its 1430 and 1431st meeting held in 16 September 2009 (CRC/C/MOZ/2). On 23 September 2009 the Committee adopted its concluding observations containing many recommendations for Mozambique to improve the situation of children in the country. The concerned civil society organisations herewith submit this report in anticipation of the review of the country's combined 3rd and 4th State Party's Report (capturing the period going from 2009 to 2016) submitted to the Committee.

I. INTRODUCTION

A. Armed Conflict / Political Context

2. Between 2014 and 2016, Mozambique experienced a military and political crisis which affected the central region more than other regions in the country. The conflict resulted in some deaths and injuries and it orphaned some children. The populations living in the areas affected were forced to move to places that appeared safer. Military convoys/escorts became necessary for the movement of people and goods from one point to the other. State institutions including schools and health facilities located in the areas affected by the conflict were closed. There was vandalism of homes and some institutions providing basic services to the communities. Security and order became a concern almost everywhere in the country, and particularly in the northern region, in Cabo Delgado province, where there are still reported occurrences of new forms of violence with recourse to firearms. These are said to be carried out by unidentified persons who have caused indiscriminate killings and vandalism of family and State property, and particularly police stations.¹
3. Statistics could not be obtained to provide a clear picture of the number of people, and particularly children affected, in a context where there is a great discrepancy in the numbers provided by different sources of information. Thus, a report by the Minister of Education and Culture (MINEC)² presented to the Assembly of the Republic on 3 March 2016 stated that there were 4.024 Mozambicans, including children taking refuge at the Kapesi shelter in the Mwanza District in Malawi due to political-military instability that unravelled in Mozambique between 2014 and 2016³. The current political, economic and social scenario characterized by re-emerging crisis can result in real danger and setbacks in retaining the progresses made in implementing children's rights.

¹ See Jasmine Opperman 'Mozambique: Counting attacks and arrests diverts quest for stability and development in Cabo Delgado', Op-Ed published by daily Maverick on 27 August 2018, available at <https://www.dailymaverick.co.za/article/2018-08-27-mozambique-counting-attacks-and-arrests-diverts-quest-for-stability-and-development-in-cabo-delgado/> (accessed on 25 November 2018). See also <https://clubofmozambique.com/news/mozambique-is-suffering-a-military-expression-of-a-political-problem/> (accessed on 25 November 2018).

² <http://www.minec.gov.mz/index.php/imprensa/discursos/discursos-do-ministro-dos-negocios-estrangeiros-e-cooperacao-oldemiro-baloi/70-intervencao-do-ministro-dos-negocios-estrangeiros-e-cooperacao-oldemiro-baloi-na-assembleia-da-republica-sobre-a-situacao-dos-refugiados-mocambicanos-no-malawi-03-03-16/file>, accessed on 8 August 2018.

³ https://freedomhouse.org/sites/default/files/Dez2016_Mocambique_Violencia%252cRefugiadoseoCampodeLuwani_POR_compre ssed.pdf; (accessed on 8 August 2018).

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

B. Methodology

4. The process of preparation of the report was coordinated by a group comprising three (3) National Civil Society Organizations namely, Rede da Criança, ROSC and Rede CAME and received the technical support provided by five international non-governmental organisations, namely, UNICEF, SOS Children's Village, World Vision, Save the Children International and the Terre des Hommes Germany. The report was developed on the basis of desk review⁴ taking into account the recommendations issued by the UN CRC Committee in 2009⁵, analysis of Government's 3rd and 4th combined report on the implementation of the convention on the Rights of the Child (2009-2016)⁶, and assessment of recommendations issued to the government of Mozambique following the 2014 UPR country review.⁷ The drafting also took into account an analysis of policies, strategies and action plans focussing on children, as well as related reports and various kinds of studies. Regional debates were held to obtain insights from civil society organisations, communities and persons working on children's rights and related subjects in the country. A preliminary report was drawn and taken back to civil society organisations, the communities and people working on children's rights for discussion.⁸ The information was shared based on presentations and discussions of the results obtained. Three regional consultation and validation meetings took place in the Northern, Central and Southern regions of the country, in Nampula, Zambézia and Maputo provinces, respectively.
5. **Children's supplementary report:** Simultaneous work was done supporting children in preparing an informed and child-led report, which goes together with this main report, separately.⁹

C. List of organisations contributing to this report

6. Organisations that were involved and contributed to this report with research, participation in meetings and its validation are set out in Annex 1 of this report.

D. Structure of the report

7. The report is divided into 9 main parts according to the CSO's guidelines on submission of reports under the Convention on the Rights of the Child, namely: (i) Introduction (ii) General Measures of Implementation; (iii) Definition of Child; (iv) General Principles; (v) Civil and Political Rights; (vi) Family Environment and Alternative Care; (vii) Basic Health and Well-Being; (viii) Education and Leisure; and (ix) Special Protection Measures. A complementary report informed and led by children is provided in annex¹⁰ together with other relevant documents forming part of the annexes to this report.

⁴ ROSC *Implementing the Convention of the Rights of the Child in Mozambique: An analysis of progress and challenges 2010-2016*, ROSC, (2016).

⁵ See the full set of recommendations issued by the Committee on the Rights of the Child following the review of Mozambique second combined report on the Implementation of the Convention on the Rights of the Child see the Committee's Concluding Observations, CRC/C/MOZ/2, available at <https://www.crin.org/en/docs/CRC-C-MOZ-CO2.pdf> (accessed on 25 November 2018).

⁶ See Mozambique 3rd and 4th combined report on the implementation of the Convention on the Rights of the Child, available on UN website at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMOZ%2f3-4&Lang=en (accessed on 25 November 2018).

⁷ See report of the UPR working Group for a full set of recommendations issued to Mozambique under the country's second cycle of the Universal Periodic Review process, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/266/63/PDF/G1526663.pdf?OpenElement> (accessed on 25 November 2018).

⁸ The preliminary study was developed by an organisation called ROSC, also partnering in the current submission. See ROSC *Implementing the Convention of the Rights of the Child in Mozambique: An analysis of progress and challenges 2010-2016*, ROSC, (2016).

⁹ See Annex 3, Mozambican children's independent report.

¹⁰ See Annex 3, Mozambique children's independent report.

II. GENERAL MEASURES OF IMPLEMENTATION

Legislative and policy measures

8. We commend the adoption of the Integrated Early Childhood Development Strategy (DICIPE 2012-2020)¹¹, the adoption of the National Strategy for Preventing and Combating Child Marriages (2016-2019)¹², as well as the enactment of the Act on the review of the Criminal Code among other normative and policy documents mentioned in paragraphs 30 to 59 of the government's report.¹³

Coordination Mechanisms

9. It is commended that the newly created Ministry of Gender, Child and Social Action (MGCAS)¹⁴ *"has as one of its main tasks: promotion, protection and materialization of children's rights, with a view to their integral development (...)"*¹⁵ It is hoped that this newly established Department will give more relevance to issues relating to children than the former Ministry of Women and Social Action (MMAS).
10. In line with the Law on the Promotion and Protection of the Rights of the Child¹⁶, the government established the Children's National Council (CNAC) as an autonomous body tasked with monitoring children's rights¹⁷. However, in 2018 CNAC dissolved and a new body, termed CNAS, as established. It is worrying that CNAC was created on the basis of a statute that enjoys a higher legal hierarchy position above the Council of Minister's decree creating the CNAS. In addition, the CNAC is also provided for under the Mozambican Law on the Promotion and Protection of the Rights of the Child, which makes no reference CNAS.
11. In 2017, the National Council for Social Action (CNAS)¹⁸ was set up as an inter-sectorial body tasked with the coordination for children, social work and basic social security issues; and it was furnished with representation at the provincial level through the Provincial Councils of Social Action (CPAS).
12. The CNAS represents some sort of a merger between three coordination mechanisms, so that beyond being a mechanism tasked with dealing with children's issues it includes mandates of mechanisms tasked with persons with disabilities and responsibilities given to mechanisms tasked with the rights of elder persons, respectively. This is a commendable idea from the perspective of reducing the number of coordination mechanisms and the burden of supporting them. Although the decree creating CNAS places on it the task to ensure the protection of children as the underlying factor, that normative instrument has the effect of diluting the relevance given to protection of children's rights under CNAC since CNAC is also attributed with the responsibility to monitor the rights of the elderly and the rights of persons with disabilities, concurrently.

¹¹ See Mozambique's Integrated Early Childhood Development Strategy 2012-2020, hereinafter referred to as DICIPE 2012-2020.

¹² See Mozambique's National Strategy for Preventing and Combating Child Marriages 2016-2019, herein after referred to as Mozambique Child Marriage Policy.

¹³ Act n. ° 35/2014 of 31 December 2014.

¹⁴ The Mozambican Ministry of Gender, Child and Social Action (MGCAS) was established under Presidential Decree n° 1/2015 of 16 January 2015.

¹⁵ See Article 2 of the Statutes of the Ministry of Gender, Child and Social Action approved by Resolution n° 18/2015 of 10 July 2015.

¹⁶ See Act No. 7/2008 of 9 July 2008, Mozambique Law on the Promotion and Protection of the Rights of the Child, herein after referred to as Act No. 7/2008 of 9 July 2008.

¹⁷ Decree n. ° 8/2009 of 31 March 2009.

¹⁸ Decree n. ° 38/2015 of 31 December 2015.

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

13. In addition, we also find it appropriate to reflect on the weaknesses that influenced the functioning of the CNAC with view to take steps to avoid carrying those weaknesses over to the newly created CNAS.
14. The Multisectoral Nucleus for Orphans and Vulnerable Children (NUMCOV) is a coordination and intervention mechanism tasked with Orphans and Vulnerable Children (OVC) and it is also responsible for the implementation of minimum care standards for children. NUMCOV is led by MGCAS and has representation at the national and provincial levels and in some districts. A technical group composed by national and international CSO's and various government departments responsible for social aspects lead the day-to-day activities of the NUMCOV. Sadly, however, the report of the government is silent on the functions attributed to this mechanism. It should be highlighted, however, that this mechanism receives financial support from UNICEF and CSOs alike.
15. We note with satisfaction the establishment of two new mechanisms, namely (i) the Multi-sectoral Coordination Group for Trafficking in particularly the trafficking of children which is placed under the leadership of the Office of the Attorney General (PGR); and (ii) the Platform for the Evaluation and Monitoring of the implementation of the national strategy on child marriages led by MGCAS.

Independent Human Right Institutions

16. The National Human Rights Commission (CNDH)¹⁹ was established in 2009 and it became operational in 2012. However, the report of the government is silent on the establishment on the role of this institution in monitoring children's rights in the country. CSOs interact with CNDH and the positive aspect to note is that the Commission has appointed a Commissioner on Gender, Children and Social Affairs.

III. DEFINITION OF THE CHILD

17. The Constitution of the Republic of Mozambique (CRM)²⁰, the Family Law Act and the Law on the Promotion and Protection of the Rights of Child define the concept of child in accordance with the CRC. However, the exception provided in Article 30 of the Family Law which allows children under 18 and above 15 to marry, constitute a violation of the best interest of the child principle and promotes discrimination of girls. Therefore, that specific dispensation of the law must be repealed.

Recommendation No. 1

Repeal the specific part in Article 30 of the Family Law Act which allows children under 18 to get married.

¹⁹ The Mozambican National Human Rights Commission (CNDH) was created by Act No. 33/2009. Despite being created in 2009, the Commission only became operational in 2012.

²⁰ 2004 Constitution of the Republic of Mozambique, herein after referred to as CRM or the 2004 Constitution of Mozambique.

IV. GENERAL PRINCIPLES

Non-Discrimination

18. In the Mozambican context, the Constitution²¹ and Law on the Promotion and Protection of the Rights of the Child recognise the principles on non-discrimination.²² The Government's Five Year Program (PQG)²³ also incorporates the principle of non-discrimination under the guise of gender equality and child protection as central elements. In practice, however, children with disabilities continue to face discrimination within the community and the family. Some are discriminated by not being allowed to pursue their studies because they are not seen as priority and also because of lack of access to adequate public transport. Children with disabilities who go to school are discriminated because they do not find adequate infrastructure and learning equipment compatible with their condition. They are also discriminated because of lack of teachers who are qualified to attend to their special needs. In fact, this is a widespread problem in Mozambique. The government continues building infrastructures without observing the requirements established under Decree no. 53/2008, of 30 December 2008, regulating accessibility and circulation for persons with disabilities in Mozambique. Girls are also discriminated in terms of power relations and the mosaic of customary practices in the Mozambican context which bar them from being treated as equals to boys. At present, children with albinism are victims of discrimination.
19. Although the Constitution entrenches the non-discrimination principle in Articles 35, 36, 37, 47 and 121 there are records of cases of administrative acts that violate this principle flagrantly, an example of such act is the case of Order 39/2003, of 31 December 2003, which imposes the transfer of pregnant girls to evening classes, barring them from possibilities of enjoying their right to education and, consequently, jeopardizing the possibilities of enhancing their growth and development. There were some advocacy actions pushing for the review Order No. 39/2003 of 31 December 2003. Unfortunately, these actions were rejected in January 2018²⁴ paving the way for continued deprivation of access to education for pregnant girls of school going age since many schools do not have evening classes due to various factors such as lack of lighting conditions and the distance between the school and places of residence of the children affected.
20. Social inequalities continue to be a sad part of the reality among Mozambican children in a context where there are disparities in access to opportunities between girls and boys, among children living in rural areas and those in urban centres, and given the differences between the central, northern and southern regions of the country. It is submitted that the political and military conflict between 2012 and early 2017 as well as natural disasters, whose negative effects are more localised in some regions of the country than in others, acted as contributing factors that heightened social inequality and different opportunities given to children.

Best interests of the child

21. Insofar as the principle of the best interests of the child is concerned, in accordance with Article 3 of the Convention, the Committee recommended the State to take appropriate measures to ensure that this principle is properly integrated into all legal provisions and implemented in

²¹ See Article 121 of the Constitution and Article 2 of the Act on the Promotion and Protection of Children's Rights.

²² See Articles 47 and 121(2) of the 2004 Constitution of Mozambique as well as Article 2 of Act no. 7/2008 of 9 July 2008 (children's Act or Law on the Promotion and Protection of the Rights of the Child).

²³ See Strategic Objective No. 5 under Priority No. 2 (Develop human and social resources) of Government five year Plan (PQG) 2015-2019.

²⁴ See

http://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk.technology.mozambique/files/files/Pregnant_schoolgirl_documents-Mozambique.pdf (accessed on 19 November 2018).

Implementation of the Convention on the Rights of the Child in Mozambique: Civil Society Report

practice in judicial and administrative decisions and in programs, projects and services which have impact on children²⁵. It should be noted that although the principle under analysis is enshrined in Article 47 of the Constitution and in Article 7 of the Law on the Promotion and Protection of the Rights of the Child²⁶, it has not being integrated into all normative instruments, and often, it does not appear to be applied in political, economic, judicial and administrative decisions. For instances, at the normative level, the aforementioned Article 30(2) of the Family Law Act that allows marry for children between 16 and 18, violates the principle of the best interests of the child, and is therefore in conflict with the right of the child to go to school and to enjoy the highest attainable standard of health, particularly when the children affected get involved in child marriages.

22. The using of dates aimed for the celebration of children's matters (1 June and 16 June) to promote lucrative shows without channelling the dividends to implement services for children in need, in addition to the fact that such lucrative events lack safeguarding measures to protect children from vendors selling alcoholic beverages, distorts the idea of promoting recreational or leisure activities for children.
23. The using of children in ceremonies for reception of individuals or persons seen as important public figures is worrying in that these events lack conditions for children attending them. For example, often they lack water, snacks and transport needed the carry children from their homes to places where these events take place and back. Notably, children are kept waiting for many hours before the arrival of such public figures. And when they arrive, children are made to sing and dance without getting the opportunity to engage or address the leadership.²⁷
24. The environment and format of communication between children and police officers working in police stations and their engagement with judges in court is intimidating for children. This includes intimidating mechanisms and procedures for hearing statements made by children and the scenario during trials.
25. There is visible lack of articulation between community courts and the formally established judicial courts. The former base their decisions on customary norms and the latter apply codified legislation. There is no mechanism for review of community court decisions by the formal courts.²⁸ This leads the latter to ignore decisions issued by community courts in a context where such decisions breach codified laws. This situation is worrying given the fact that such decisions as made by community courts may relate to the rights or interests of children.
26. Noting that community courts are closer to many families living at community level, there is urgent need to train magistrates working in these courts in matters relating to children's rights and allow their decisions to be subjected to review by formal courts.

Life, Development and Survival

27. We commend the adoption of the Integrated Early Childhood Development Strategy (DECIPE) as a strategy to ensure the integral development of children in early childhood.

²⁵ See para. 32 of the Concluding Observations of the CRC Committee following the assessment of Mozambique's second periodic report on the implementation of the Convention on the Rights of the Child, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMOZ%2fCO%2f2&Lang=en (accessed on 25 November 2018).

²⁶ See Article 47 of the 2004 Constitution of Mozambique and Article 7 of Act no. 7/2008 of 9 July 2008 (children's Act or Law on the Promotion and Protection of the Rights of the Child).

²⁷ This information was obtained from some of members of the organisations partnering in this submission who witnessed these challenges when they were attending such reception events organised for persons regarded as important public figures.

²⁸ See, generally, Joaquim Fumo 'Women and access to justice in the context of legal pluralism in Mozambique: An analysis of respect for gender equality in dispute resolution in community courts', Dissertation submitted in fulfilment of the Masters of Law Degree, submitted to the Law Faculty of the Eduardo Mondlane University, unpublished LLM thesis, 2018, copy on file with the authors.

Implementation of the Convention on the Rights of the Child in Mozambique: Civil Society Report

Regrettably, however, DICIPE has not been adopted as a priority strategy by institutions tasked with the education and development of children. To this end, we highlight that the Ministry of Education and Human Development (MINED) is the principal institution bearing responsibility to ensure the education and development of children. Additionally, it is submitted that there is lack of resource commitment in terms of MINED budget aimed to ensure the establishment of infrastructure and equipment's needed for operationalisation of the early childhood education system.

28. Over the past years, we have seen improvements on indicators of child survival and development as a result of efforts to implement government policies and programs. For example, there has been a decline in under 5 mortality (from 141/1000 in 2008 to 97/1000 in 2011); there was increase in access to good water sources (from 35% in 2008 to 40% in 2011); and improved access to better sanitation from (19% in 2008 to 24% in 2011). Progress has been made on other indicators that are important for children's health and well-being²⁹. However, there are challenges. In 2014, chronic malnutrition affected 43% of children under five³⁰ years.
29. Road safety remains a challenge. The number of road accidents caused by poor road signs, low level of civic education on road aspects, poor quality of driving schools and poor monitoring by road traffic enforcement agents remain very high³¹. There is lack of reliable data on the number of children involved in road accidents, nationally.
30. It is also worrying that there are records of death of children caused by dog bites. Whilst the numbers are not alarming, it is concerning that treatment for rabies is not easily accessible, and it is expensive for low-income families experiencing more casualties³². In the same vein, there is lack of laws regulating the keeping of animals that pose danger to public health as well as lack of mechanisms of communication to engage families about the danger of keeping such animals.

Child participation

30. We commend the inclusion of child participation principle as one of the main pillars of the National Plan of Action for Children (PNAC II). However, there are no clear indicators defining the means through government will achieve child participation under PANC II.
31. Moreover, we commend the creation of child participation platforms such as the Children's Parliament, the institutionalisation of children's clubs at school level, and the promotion of national, provincial and district conference focussing on girls. We welcome that fact that the government took into account recommendations stemming from meetings organised by and or led by children themselves in developing its plans. This includes the development and adoption of a list capturing the worst forms of child labour based on recommendation stemming from the IV Session of the National Children's Parliament.
32. In the Mozambican context, the work under the Children's Parliament has been going since 2001, with MGCAS mobilising and coordinating CSO's and other key government institutions to support this forum tasked with child-led advocacy at all levels. The progress and development of the Children's Parliament is notable and the experience gained reveals a need to systematise its functioning. However, to this date, the Children's Parliament lacks a comprehensive guideline regulating its functioning and operational procedures for its meetings in events throughout the

²⁹ For example, increase of HIV/SIDA treatment and testing coverage: 15% in 2008 to 26% in 2011; and expand on the coverage of vertical transmission treatment, 49% in 2008 to 72% in 2011), the level of maternal and neo-maternal mortality and chronic malnutrition remain worrying. See more details in MICS 2008 and IDS 2011.

³⁰ UNICEF Study on the situation of Children, (2014).

³¹ Public Administration Institute (ISAP), *Policy Brief*, (2014).

³² Some informers said that treatment can be as expensive as USD 200 (two hundred dollars) or even more.

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

country. We are, however, aware that MGCAS started planning the process of developing guidelines governing the functioning of the Children's Parliament.

33. There is encouraging progress in child participation in Mozambique, including initiatives such as child-led programs targeting children through the media. However, given the dominant notion of childhood in the country, which views children as objects of actions driven by adults rather than as a subject of rights, the level of request and consideration of children's views on issues that concern them remain weak, both at family levels, as well as in schools and communities. To this end, a UNICEF study entitled "Reflecting the Voices of Children" showed that only 54% of the children who participated in the survey stated that their views had been given due consideration in their respective schools, with lower percentages in rural areas (39%) in relation to provincial capitals (67%) and other cities within the province (60%)³³ whose views were not given weight at all. Some children said, during meetings in the Children's Parliament, they were told to say what adults tell them.
34. In 2015, in its Concluding Recommendations to Mozambique, the African Committee of Experts on the Rights and Welfare of the Child recommended, that due consideration be given to the child in general and to the Children's Parliament in particular, through the provision of budget specifically aimed to ensure the functioning of the Children's Parliament.³⁴
35. We took note of significant developments in the levels of child participation in Mozambique in a context where children themselves take initiatives to organise groups which they led, whether these groups are formed for cultural, sports, academic, and other purposes. However, the law governing freedom of association sets out, exceptionally, that children below 18 can create their associations as long as the management structure of such entities is composed of persons above 18 years³⁵. The law does not fully respond to the current scene characterised by child-led initiatives that can led children themselves to establish their own associations which can then be develop and transformed into associations recognised under the law. In other words, in Mozambique, there is no legal instrument formally regulating the constitution and functioning of child-led groups.
36. Out of the 53 municipalities existing in Mozambique, at least 10% develop activities aimed at promoting and ensuring the protection and investments for children by taking action seeking to (i) Prevent and combat the sale and consumption of drugs and alcohol for children; (ii) implementing awareness raising activities against the trafficking in children; (iii) Disseminating mechanisms to report cases of abuse, exploitation, violence and trafficking; (iv) Raising awareness about children's rights; (v) opening doors for participation of children in their sessions and decision-making processes at the level of the municipality (Municipal Council, meetings in smaller units within municipalities and Municipal Assembly); (vi) implementing regular interaction of municipal agencies with the Children's Parliament and other child-led groups; (vi) building and maintaining municipal gardens, parks and playgrounds for children; (vii) establishing and running of municipal libraries (with a section specific for children's literature); (viii) Carrying out sports and cultural events for children or initiatives that include them (xv) and Intervening municipal activities seeking to prevent and combat child marriages.

³³ UNICEF Study on the situation of Children, (2014).

³⁴ Recordings of an interview with a child Tete.

³⁵ Act no. 8/91 of 18 July 1991 governing the establishment of Associations.

Recommendation No. 2

- (a) **Recommendation relating to the need to develop guidelines for the functioning of the Children's Parliament** – noting the need to standardize procedures and the functioning of the Children's Parliament in the entire country (at all levels), it is necessary to fast-track the implementation of the plan on the development of guidelines on the functioning of the Children's Parliament, ensuring that children themselves play a central role in the process and their contributions are incorporated within the broader plan.
- (b) **Recommendations on budgetary allocation for the Children's Parliament** - We reiterate the need for budget allocation for the operationalisation and functioning of the Children's Parliament at all levels. The expression 'at all levels' includes the national, provincial, and district levels, as well as at the level of municipalities. Where necessary, CSOs should play a supportive role by complementing or increasing the amounts allocated government.
- (c) **Recommendation on child-led associations** - we recommend, within a reasonable period of time not exceeding 5 years, the enactment of regulations governing the establishment of associations or groups led by children. Such regulations must capture aspects relating to the functioning of such associations and they should safeguard the interests of children.
- (d) **Recommendation regarding the need to establish a minimum quota for representation of children within the structure of the governing bodies associations dealing with children's interests** – In line with the recommendation above we find it necessary for the law regulating the establishment of associations to prescribe a minimum quota of representation of children within governing structure of associations established by children or those established for their benefit.
- (e) **Recommendation relating to the inclusion and participation of children in other bodies representative of children interests** - Ensure greater inclusion and participation of children in bodies representing them including in the Children's Parliament and in other administrative and judicial proceedings taking into account the need to secure respect for their views, as provided for in the Constitution, Family Law, the Law on the Promotion and Protection of the Rights of the Child and well as in the CRC.

V. CIVIL RIGHTS AND FREEDOMS

Birth Registration

37. The importance of birth registration and the enjoyment of civil rights and freedoms including the right to access to information by children, among others, have been widely discussed at the global arena. To this end, the Committee made recommendations for Mozambique to improve its system.³⁶ We recognize the effort by government to improve the birth registration system in Mozambique through the implementation of free birth registration campaigns, mobilisation and awareness raising for communities to adhere to birth registration and provision of birth registration services at neo-natal facilities. There are national and international partners, including CSOs supporting the government in this process and the results are visible. However, there is little adherence to birth registration services, including low rates of adherence to free birth registration services (the first 120 days after birth as provided under the law), and there is still low allocation of resources (financial, material and human) at the level of civil registrar office in the districts.

³⁶ See, generally, para. 38 of the Concluding Observations of the CRC Committee following the assessment of Mozambique's second periodic report on the implementation of the Convention on the Rights of the Child, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMOZ%2fCO%2f2&Lang=en (accessed on 25 November 2018).

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

Recommendation No. 3

- (a) Mozambique should consider allocating more resources (financial, material and human) to civil registrar at district level to ensure that they are able to carry out their work expanding birth registration to all children.
- (b) Low adherence means there is need to intensify campaigns and programs aimed at raising awareness about the importance of birth registration.
- (c) Mozambique should make birth registration available for free to all children under 18 years, without exception.

Children and media privacy

38. The protection of the right to privacy is included in the thematic speaking to the enjoyment of civil rights and freedoms. The Committee urged the State to adopt measures to strengthen law enforcement, implement awareness raising and educational campaigns in cooperation with the media to ensure that children's privacy is respected in the media, particularly on television³⁷. The Committee further recommended the government to ensure that the National Council of Communication (CNCS)³⁸ should effectively, safeguard in the media, and the child's right to privacy, good name, honour and identity. To this end, several stakeholders have implemented training programs for journalists on matters concerning children's rights and their protection mechanisms. However, we note that the Superior Council of Social Communication (CSCS) lacks standards regulating the use of images of children in the media. In addition, the Access to Information Act deals with the protection of the right to privacy of everyone without making explicitly reference to the need to protect the child's right to privacy³⁹. The law in analysis sets out that "*information relating to images of the private life may only be disclosed with the express consent of the owner*". However, it does not provide any clarity as to whether there is need to obtain parental permission or authorisation from care givers to disclose images of children or images relating to them. Yet, in various occasions, television reports expose images that violate the principle of respect for the child's right to privacy.⁴⁰

The right to access to information

39. The right to access to information is one of the fundamental rights of the child protected in the CRC, in ratified international instruments and international law principles recognised by Mozambique. During the second review on the implementation of the CRC in Mozambique, the Committee recommended Mozambique to guarantee every child, in particular children living in places of difficult access in the country, equitable access to appropriate information in accordance with the child's age and maturity.⁴¹ In accordance with Article 17 (e) of the Convention, the Committee also recommended the country to adopt specific laws incorporating guiding principles to protect children from information and material detrimental to their well-being.⁴² On this aspect, there has been progress in the involvement of children in dissemination

³⁷ See para. 42 of the Concluding Observations of the CRC Committee following the assessment of Mozambique's second periodic report on the implementation of the Convention on the Rights of the Child, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMOZ%2fCO%2f2&Lang=en (accessed on 25 November 2018).

³⁸ See <http://www.cscs.gov.mz/index.php/documentos> (accessed on 19 November 2018).

³⁹ See Article 27 of Act n.º 34/2014 of 31 December 2014, Mozambique access to information Act.

⁴⁰ See Civil Society Report on the implementation of the African Charter on the Rights and Welfare of the Child submitted to the Committee of Experts on the Rights and Welfare of the Child in 2014.

⁴¹ See para. 18(d) of the Concluding Observations of the Committee on the Rights of the Child following the review of Mozambique State party's Report on the Implementation of the Convention on the Rights of the Child (CRC/C/MOZ/CO/O2).

⁴² As above, para 18(b).

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

of information, and there are more programs for children in media, some of which include children in the production and presentation of contents.

40. We welcome the adoption of the Law on the Promotion and Protection of the Rights of the Child⁴³ and the Right to Access to Information Act⁴⁴ which contain provisions speaking to the enjoyment of this right under analysis. However, the latter lacks clarity on how children can obtain and how they can be protected from inappropriate information when they are the subjects of content production and recipients of information circulating in the country. Both instruments mentioned above lack regulations. This affects the extent to which they are implemented. In fact, it explains why inappropriate practices persist in the media undermining the image of children and breaching their integrity. It is our hope that by developing regulation to these instruments and implementing them it will be possible to address some of the concerns raised here speaking to the violation of children's rights. Thus, such regulations could help by governing media procedures and the elements required to safeguard the rights of the child. The concerns raised above about lack of regulations also applies to the need for regulations governing the use of information and Communication Technologies (ICTs) and social networks by children, generally.
41. The report submitted by the government for review⁴⁵ highlights that the proportion of households with access to radio was 55.5% in 2014/15 against 24.2% of households which accessed television in the same period. A thorough assessment of the data provided leads to believe that there was some progress in relation to previous years. However, based on this same information, it is possible to depict that a larger index of the population lacks access to information either via radio and or television, with regional disparities and clear differences between rural and urban areas in a context where rural areas have less access to information.
42. The other aspect of access to information for children relates to how the government provides useful information about governance processes to children, not only in a sense for of appreciating how children understand the information, but also in efforts to bring them to participate meaningfully in decision-making processes by presenting proposals whose content is well substantiated. This is termed, informed participation. It would be have been interesting if the report by government provided details describing how information is disseminated to ensure informed participation by children in decision making processes, general.

Recommendation No. 4

- (a) Take measures to ensure that media (public/private) adopts and applies procedures and mechanisms for safeguarding the child on issues relating to their image and integrity.
- (b) Encourage parents and care givers to protect children from information that can jeopardize their growth, including controlling access to radio and TV programmes by children. To this end, the State should articulate its actions with civil society entities, local communities and religious leaders in the implementation of awareness raising and campaigns aimed at making parents and families aware of the type of information that are appropriate for children.
- (c) Take into account the guiding principles speaking to the protection and safeguard of children against information and material content that harm their well-being in the process of developing regulations for Act no. 34/2014, of December 31.

⁴³ Act n.º 7/2008 of 9 de July 2008, Law on the Promotion and Protection of the Rights of the Child..

⁴⁴ Act n.º 34/2014 of 31 December 2014.

⁴⁵ See para. 166 of Mozambique's Combined 3rd and 4th State Party's Periodic Report on the Implementation of the CRC (CRC/C/MOZ/2), available at

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMOZ%2f3-4&Lang=en (accessed on 25 November 2018).

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

- (d) Ensure child participation in processes aimed at improving the quality of public services impacting in their well-being.

VI. VIOLENCE AGAINST CHILDREN

Corporal punishment

43. The protection of children against violence includes efforts to address the problem of corporal punishment, the prohibition of torture and other cruel, inhuman or degrading treatment that affect their well-being.⁴⁶
44. As regards corporal punishment, Article 47 of the Constitution guarantees children the right to protection and care necessary for their well-being⁴⁷. In its turn, Article 6 of the Law on the Promotion and Protection of the Rights of the Child states that "*no child shall be subjected to negligent, discriminatory, violent and cruel treatment, nor be subjected to any form of exploitation or oppression*"⁴⁸. The Law defines child abuse to include "aggression or other deliberate injury" committed against the child.
45. However, the law lacks provisions explicitly prohibiting corporal punishment committed against children⁴⁹. Available data, indicates that there are only policies, circulars or ministerial instructions and orders, as well as codes of conduct prohibiting the use of corporal punishment in schools. The implementation of these policy instruments is frustrated by lack of binding legal normative instruments prohibiting corporal punishment, explicitly. This despite the fact that the country has pledged to international commitments to address the scourge of corporal punishment.⁵⁰
46. In the context of the scenario above, there are studies highlighting that, in Mozambique, corporal punishment of children continues to be used frequently in families, in schools, and in the communities where they live⁵¹. According to Global Initiative to End Corporal Punishment in 2009 about 52% of girls had been whipped or beaten by their parents. The study above notes that in 2013 there was a decrease by 29%⁵² in the use of corporal punishment against children. The table below draws a clear pictures showing that, in a recent past, many children were subjected to corporal punishment.

VII. VIOLENCE AGAINST CHILDREN

Physical and humiliating form of punishments

| |
|---|
| Proportion of children subjected to corporal punishment and or psychological assault by care givers in the previous years |
| <ul style="list-style-type: none">● Girls beaten with a stick or ruler: |

⁴⁶ See, generally, Aquinaldo Mandate *Implementing the Convention on the Rights of the Child in Lusophone Africa (Angola and Mozambique)*, Eleventh, 2016.

⁴⁷ See Article 47 of the 2004 Constitution of Mozambique.

⁴⁸ See Article 6 of Act n. ° 7/2008 of 9 July 2008, Law on the Promotion and Protection of the Rights of the Child.

⁴⁹ 2015 Report of the Global Initiative to End Corporal Punishment of Children.

⁵⁰ See 2016 Report of the Global Initiative to End Corporal Punishment stating that "Mozambique expressed its commitment to ensure prohibition of corporal punishment of children by accepting recommendations to this end during the Universal Periodic Review (...) in 2016".

⁵¹ See 2009 Ministry of Health (MISAU) and UNICEF report on violence and Sexual Abuse against Children in Mozambique.

⁵² 2016 Report of the Global Initiative to End Corporal Punishment of Children.

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

- 2009: 52%
- 2013: 29%
- 1 in 3 children was beaten by hand at home.
- 37% of children were beaten with an object.
- 1 in 3 children were beaten by the hand at school
- 40% of children at school were beaten with an object

47. Given the importance of addressing the problem posed by the use of corporal punishments in the administration of discipline for children, several CSO's and the government implemented campaigns on the issue. However, the practice persists due to a large portion of the population who support the use of corporal punishment as a means of discipline. For example, in the Mozambican context, it is common to hear some people arguing that they are well disciplined because of corporal punishment inflicted upon them when they were young and that is why they have become who they are as good parents and believe that corporal punishment was useful to them.⁵³ This evidences ignorance about the effects of corporal punishment on children and it is a clear sign of obsession towards this practice.

Sexual abuse

48. With regard to the protection of children against sexual offenses, Article 219 of the Criminal Code sets out that the rape of a child under 12 is a heinous offence and a public crime. The law leaves no effective protection for children above 12 and below 18 who are victims of rape. In Article 223, the Criminal Code provides that when the victim of indecent assault or rape is a person under 16, prosecution will only take place if the victim or a person providing care for the victim makes a complaint. It should be noted that there are cases where parents or care givers and other persons tasked with responsibilities over the child, do not take into account the best interests of the child. This can happen, in particular, for children between 16 and 17 years, thus leading to cases of abuse of children's rights when the burden of initiating proceedings is placed upon such parents and care givers who lack interest on the child's as they may relegate and miss out on the opportunity of initiating prosecution against offenders who rape or commit indecent assault against children.

49. In turn, Articles 219 and 220 of the Penal Code punishes sexual relations with children under 12 and bans sexual acts with children under 16 years, respectively⁵⁴. It may be argued that these issues fall under a different subject of law in relation to the question of minimum age of marriage which is a subject of Family law. However, the fact that government recognised the need to raise the age for consent to sexual relations to 18⁵⁵, demonstrates that it is concerned about this problem. The current scenario allows different penal treatment for perpetrators who engage in sexual conduct with children under 12 who are punished for

⁵³ This information was shared by members of some of the organisations partnering in this report based on conversations they had with different people on their perceptions about corporal punishment.

⁵⁴ See Articles 219 and 220 of the Penal Code approved by Law no. ° 35/2014 of 31 December 2014.

⁵⁵ See para. 90 of Mozambique's Combined 3rd and 4th State Party's Periodic Report on the Implementation of the CRC (CRC/C/MOZ/2), available at

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMOZ%2f3-4&Lang=en (accessed on 25 November 2018).

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

rape. Others who engage in sexual conduct with children above 12, but under 16 years are punished for committing an offence termed ‘engaging in sexual conduct with minors’. This is detrimental to children between 12 and 18 years to the extent that offenders who engage sexually with them are punished by lighter prison sentence between 2 and 8 years in comparison to the heavier sentence applied to perpetrators who rape children below 12.

50. Data obtained from the Demographic and Health Survey (IDS) 2011 show that in the last decade, about 9.3% of girls aged 15-19 years had been abused sexually. Girls are 3 times more likely to suffer sexual violence than boys of the same age: 9% of girls and 3% of boys between the ages of 15 and 19 suffer sexual violence. Boys and girls are highly exposed to physical violence in Mozambique: 28% of boys and 22% of girls between 15-19 years experienced physical violence. In most cases that were reported, perpetrators were people who are close to the victims (these include relatives such as parents, and neighbours, teachers, and others).
51. On the need to strengthen the juvenile justice system, document in annex (see Annex 2) provides a table showing the challenges linked to reported cases and their outcomes.
52. Despite some progress, including increase in the number of cases decided by courts moving from 59.02%, 78.07% and 89.3% in 2011, 2012 and 2013, respectively, there are still certain issues that have not had good attention. These include the lack of data on the rate of violence occurring in the country, and particular violence affecting children. There is also a general lack of counselling and therapy needed to address the high levels of violence, neglect and abuse that occur in communities, in families and in schools⁵⁶. In the entire country, there are only 44 professionals qualified in forensic medicine, most of them living in the provincial capitals and in the main centre of districts, and particularly in the city of Maputo with about 18%, followed by Nampula Province with 16% and Sofala Province which houses 14% of these professionals. The remaining provinces and certain districts lack forensic practitioners and they have access to these experts and their services, occasionally.

Child Protection Committees at Community levels (CCPC)

53. It is observed that the report of the government does not address the role of the Community Committees for the Protection of Children (CCPC) in preventing and responding to corporal punishment, sexual abuse, neglect and exploitation of children. The CCPC are only mentioned in paragraph 203 of the report of the government stating that 1480 CCPC’s were trained on children’s rights matters⁵⁷. It is submitted that CCPC’s play an important role in creating an environment that protects children at the level of family, in the community and in schools. For instances, in the context of child protection, CCPC’s intervene as community reference system composed of representatives of leadership of the local community, including children and women. In their interventions CCPC’s help preventing violence and abuse against children by communicating through local languages and where cases of violence and abuse occur they assist by reporting. As such, we believe it is pertinent for the government to report on the achievements of these committees in the process of implementing children’s rights, and in particular in ensuring child protection in the country.

⁵⁶ 2014 UNICEF Report on the Situation of Children in Mozambique.

⁵⁷ See para 203 of Mozambique’s Combined 3rd and 4th State Party’s Periodic Report on the Implementation of the CRC (CRC/C/MOZ/2), available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMOZ%2f3-4&Lang=en (accessed on 25 November 2018).

VIII. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Family Environment

54. In the Mozambican context, emigration of the active population, and particularly men who leave their homes to become self-sufficient, leaving behind children in the hands of the elderly, and other children is a phenomenon relatively frequent. As a result, the affected children are exposed to various risks and challenges. For instances families give their children away to other families with the expectation that they will receive support in exchange, some children are exploited or forced into unions and others face child marriages.

Social protection programs

55. In Mozambique, social protection services are provided by various institutions. Among them, we highlight the following, given their role in disseminating information about the criteria and procedures for accessing these services: the Civil Registry tasked with birth registration, and the Legal Aid Board (termed *Instituto do Patrocinio e Assistancia Judiciaria – IPAJ*) which provides free legal assistance for indigent persons. The National Institute of Social Action (INAS) is yet another institution tasked with the provision of social protection services. It provides (i) basic social assistance program, (ii) direct social support assistance programs, (iii) social service program under social interventions, and (iv) social intervention services for persons with low income. However, INAS is less popular in disseminating information about the criteria and procedures for accessing its services. CSO's, we have limited access to information about the services provided by INAS. This limits CSO's monitoring role as well as capacity to disseminate the eligibility criteria and requirements relating to the services provide by INAS. The situation is different when it refers to social protection services provided by other institutions mentioned earlier above. INAS has not been proactive in this regard. Potential beneficiaries of INAS programs are the most affected negatively and particularly vulnerable groups such as children in particular.

56. The fact that INAS targets vulnerable groups needing greater attention given their vulnerability shows the relevance of its services to the groups concerned. There are many vulnerable groups living in all districts in Mozambique, especially in rural areas. This shows that at district level there is high demand for INAS services. Regrettably, however, currently INAS is not present in all districts in the country. Instead, it used its representation based in certain districts to cover other districts (so that in districts where INAS has representation such representation is used to cover three or more other districts where INAS is not physically represented). This affects tremendously (i) INAS capacity to provide services with the desired quality and transparency, (ii) the extent to which potential beneficiaries can access INAS services, and (iii) the frequency with which INAS services/programs are made available in each district, including the frequency with which each beneficiary receives/accesses services.

Adoption and Guardianship

57. The fact that Mozambique has not ratified the 1993 Hague Convention on Inter-country Adoption limits the extent to which the country can process and follow-up inter-country adoption processes involving Mozambican children. If the country ratifies the Convention, it will have the opportunity to act in a harmonised manner with counterpart States that ratified the Convention in a sense to include the possibility of ensuring compliance with safeguard principles and procedures aimed to protect children.

Recommendation No. 5

- (a) **Recommendation speaking to the need to improve on transparency and accountability on services provided by INAS** – disseminate, widely and all levels, the services and programs provided by INAS, their eligibility criteria as well as accessibility procedures. To this end, information relating to INAS's programs and services should be made available to CSO's, the community, religious leaders and other relevant stakeholders. The information must also be shared with community radios and its content must be simplified and provided in official and local languages alike.
- (b) **Recommendation regarding the coverage of INAS programs and services** - make investments to ensure that INAS is represented in all districts.
- (c) **Recommendations on inter-country adoption** - ratify the 1993 Hague Convention on Inter-country Adoption, in order to safeguard the best interests of the children affected by inter-country adoption and to enhance the advantages that the country's domestic legislation provides on the subject.

IX. BASIC HEALTH AND WELL-BEING

Health services

58. Basic health is a fundamental aspect of the well-being of the community, the families within the community and in particular for children. Domestic laws protect the right to health⁵⁸. There are also policy documents that recognise this right. Thus, the second Strategic Objective as embedded in the Five Year Plan of the Government 2015-2019 (PQG) is identified as the need to improve the health of the population. In clear terms, this is defined as the need to *"Expand access and improve the quality of health services, reduce maternal mortality, morbidity and mortality caused by chronic malnutrition, malaria, tuberculosis, HIV, non-communicable diseases and reduce preventable diseases"*.⁵⁹
59. Progress has been made in (i) prevention of diseases (such as diarrhoea, malaria, HIV/AIDS and acute respiratory infections) which are the main causes of death of children under five, (ii) increase in HIV/AIDS prevention and treatment (including prevention of vertical transmission, ART including paediatric treatment), (iii) the Ministry of Education introduced educational programs on HIV/AIDS in primary and secondary school curriculum (iv) and there has been progress in vaccinations through the implementation of vaccination campaigns. Insofar as malaria is concerned, there has been progress through distribution of mosquito nets, intra-house spraying and the treatment of malaria with recourse to artemisinin derivatives, among other factors of advancement.
60. The general health situation of children and adolescents in Mozambique remains a matter of concern. Treatment expenses/cost remains high and the distance between services and users of public health facilities remains too long and far. It should be noted that the country continues to experience high levels of (i) severe chronic malnutrition and acute malnutrition both having long-term impact on children's lives, (ii) non-institutional births carried out by non-health professionals, (iii) infant mortality caused by preventable diseases such as malaria, diarrhoea, and others including traditional nurses (iv) infant and maternal mortality, (v) early pregnancy,

⁵⁸ See, for example, Article 89° of the 2004 Constitution, Article 13° of Act n° 7/2008 of 9 July 2008 on the Promotion and Protection of the Rights of the Child.

⁵⁹ See the Five Year Plan of the Government 2015-2019, also known as *Plano Quinquenal do Governo 2015-2019 (PQG)*, hereinafter referred to as PQG.

Implementation of the Convention on the Rights of the Child in Mozambique: Civil Society Report

(vi) poor access to maternal and child health (MCH) services, and (vii) poor quality of services, generally.

Adolescents' sexual reproductive health

61. Several policies and programs speaking to adolescents' sexual and reproductive health (SRH) have been approved. These include the National Reproductive Health Program 2008-2012, the National Policy on Sexual and Reproductive Health and Rights (2011), the School Health Strategy 2010-2016, the Strategic Plan for the Health Sector (PESS) 2014-2019, among others.
62. However, some challenges persist. The country has high adolescent fertility rate (about 170 children per thousand adolescents)⁶⁰, and very low levels of usage of contraceptives (about 11%), especially in rural areas⁶¹. Studies highlight that girls living in rural areas are more likely to fall pregnant before they reach 15 than girls in urban areas⁶². In 2015, 9.6% of children aged 15 years who were engaged on a study on malaria and HIV/AIDS immunization indicators gave live birth to a child. Whilst 4.7% of them were pregnant for the first time, 14.3 % were pregnant at some point before the survey (2015)⁶³. It is also emphasized that certain social norms, gender inequality, peer pressure, different perspectives about the future, as well as satisfaction of basic needs and religion, played a central role in influencing decisions affecting the behaviour of these adolescents⁶⁴.
63. The review of the Penal Code led to the inclusion of provisions allowing adolescents to carry out abortion up to 12 weeks into pregnancy, Abortion is also allowed in case of rape and it should be done up to the 16th week of pregnancy. It is necessary to ensure availability of resources and track their application with view to ensure that abortion is implemented safely and in accordance with the applicable penal legislation.

Harmful practices including premature unions/early or forced and child marriages

64. The problem of harmful customary practices remains a matter of concern in the context of the enjoyment of children's rights. Examples of these include initiation rituals, the phenomenon of child marriages and abuses committed against children with albinism as these are motivated by certain traditional practices. The Law on the Promotion and Protection of the Rights of the Child compels the State to take measures to eliminate harmful cultural practices affecting the enjoyment of children's rights⁶⁵. The Government has taken steps to this end, including through the development of interventional policies such as the recently approved National Strategy for Preventing and Combating of Child Marriages, which should help solve the problem of child marriage occurring in some communities in the country. In the Mozambican context, child marriages are driven by several factors including poverty and initiation rites.⁶⁶ These rites represent a violation of children's rights in different forms, in particular by conferring children inappropriate teachings leading them to engage in early, forced or child marriages without respect to the principle of development of the child.

⁶⁰ Arnaldo C. *et al* 'Factors and tendencies linked to early motherhood in Mozambique', *Gazeta de População e Saúde*, Issue n.º 4, 2014.

⁶¹ See, generally, the 2011 Demographic Health Survey also known as '*Inquerito Demográfico de Saúde de 2011*', available at <http://www.ine.gov.mz/operacoes-estatisticas//inqueritos/inquerito-demografico-e-de-saude/mocambique-inquerito-demografico-e-de-saude-2011.pdf/view>, (accessed on 27 November 2018).

⁶² UNICEF, FNUAP & CECAP '*Child marriages and pregnancy in adolescents in Mozambique – A summary analysis*', UNICEF, FNUAP & CECAP, 2015.

⁶³ Ministério da Saúde (MISAU) *et al* '2015 Mozambique Malaria, HIV/AIDS Immunisation Indicators Survey', Ministério da Saúde *et al*, Maputo, 2015.

⁶⁴ Colonna E., & Muianga B '*Dating, loving and making love – Socio-cultural norms, values and situations influencing adolescents sexual life in Maputo, Mozambique*', PCI Media Impact/UNICEF, 2015.

⁶⁵ Articles 64^o and 65^o of Act n.º 7/2008, of 9 July 2008, approves the Mozambican Children's Act (Act No. 7/2008 of 9 July 2008).

⁶⁶ See PLAN International '*In-depth review of the legal and regulatory framework on child marriages in Mozambique*' PLAN International, 2014. See also, generally, Panos Institute '*Media brief on child marriages in Mozambique*', Panos Institute, 2015.

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

65. Despite negative aspects described in the previous paragraph, it should be emphasised that there are some beneficial aspects and constructive teachings for the well-being of children linked to initiation rites. These positive aspects linked to these rites should not be underestimated. Our concerns gravitates around the negative aspects of initiation rites mainly because they violate children's rights. On such negative aspects we are concerned for example about the fact that a child who has undergone initiation rites is considered as being an adult or mature, despite their young age and other important aspects.

Recommendation No. 6

- (a) Initiation rites and the processes relating to these rights should be subjected to regulations with view to establishing standards that are acceptable when applying them to children.
- (b) The country should undertake a study to identify the objectives, contents, and approaches used in initiation rites that apply to children. The study should aim to identify both the positive and negative aspects of these rites and draw guidelines on their application to prevent child marriage and early pregnancies.
- (c) Develop a curriculum on initiation rites that focusses on combating child marriages or other related negative practices.
- (d) Engage community leaders and the matrons who implement initiation rites to assess the level of achievements of these rites and identify good practices and the challenges.
- (e) Promote/support initiatives aimed at monitoring and assessing sexual and reproductive health services provided to children through their inclusive participation and integration of the views of the child.
- (f) Revitalise the existing counselling platforms/groups (e.g. the Young and Adolescent Friends Services (SAAJ) and the BIZ Generation Project) given their role in spreading constructive messages on sexual and reproductive health for adolescents, thus allowing such messages to reach a wider part of adolescents and young people.

X. RIGHT TO EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Access to education

66. The CRC protects the right to education and leisure for all children as these rights are understood to be among some of the fundamental rights needed for their development. However, in Mozambique, access to quality primary education remains a challenge, both in urban centres and in rural areas. It is estimated that 13% of girls and 9% of boys of primary school going age are out of school⁶⁷. According to MICS indicators highlighted in the table below, Mozambique made significant progress in primary school enrolment and attendance for children of school going age in both lower (grade 1-5) and upper (grade 6 and 7) primary school levels (also known as *1º e 2º Ciclos do ensino primário*). This does not take away the challenges (including the fact some children remain out of the educational system and poor quality of education provided). A comparative analysis of data from primary and secondary schools, shown on the table below, reveals that in terms of coverage there are more primary schools and few secondary schools in the country. This means that the current coverage of secondary schools cannot absolve all children completing primary school level. In other words many children (boys and girls) of secondary school going age are kept out of school because of this challenge.

⁶⁷ MICS, 2017.

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

| | Gross enrolment rate (%) | | Net enrolment rate (%) | | Net attendance rate (%) | |
|-------------------|--------------------------|-------|------------------------|-------|-------------------------|-------|
| | Boys | Girls | Boys | Girls | Boys | Girls |
| Primary schools | 110 | 101 | 91 | 87 | 71 | 72 |
| Secondary schools | 17 | 19 | N/A | N/A | 15 | 17 |

Source: MICS 2017

67. Based on government performance in 2016, 8.500 teachers were hired, in 2017, 8.306 teachers were employed and given the current economic crisis the country is experiencing the plan is to employ less, only 2.013 teachers, in 2018. This has reflections in the quality of education, since in its five-year plan (2015-2019) the government set a target to achieve a ratio of 57 students per teacher in the first cycle (grade 1-5) of public primary education. Data from government sources highlight that in 2016 the teacher/student ratio was 1:62 moving to 1:60 in 2017. However, in 2018, it is expected that the teacher/student ratio will shift to 1:61⁶⁸. This is a sign of regression on the advancements made, which may impact on the quality of education.
68. Another challenge contributing to poor quality of education in Mozambique is teacher absenteeism. The report submitted by the government is silent on this aspect. According to a World Bank study⁶⁹ 45% of teachers were not in their classrooms during unannounced inspection. Of this figure, 11% of teachers were not even in the school premises.
69. According to MICS 2017, only 34% of boys and 32% of girls were able to complete primary education. Comparing these details with data on school enrolment and attendance rates highlighted above, we found that, despite high enrolment and attendance rates, completion rates are still low. There are several factors contributing to these negative results, including high drop-out rates (generally, girls have a much higher drop-out rate compared to boys enrolment and attendance; and they have a lower completion rate), food insecurity affecting some households (the government has identified several hunger sites throughout the country and it reported high rates of acute and chronic malnutrition that affect performance and school attendance by children).
70. Fainting is yet another challenge affecting the extent to which children enjoy their right to education. Strangely, this phenomenon victimises girls mostly. Victims have reported that the symptoms of fainting include shivering, loss of senses, remaining asleep for many hours, and difficulties speaking or expressing oneself.⁷⁰ Often, it is argued that the reasons for fainting are linked to the fact that some schools were built in places where there were graves and traditional rituals were not executed before construction and during the inauguration of school premises. It has also been alleged that vindication by evil spirits linked to non-compliance with certain traditional norms are also behind the occurrence of fainting in schools.⁷¹ The government established a multidisciplinary team (comprising of representatives from the Department of

⁶⁸ PES 2016 p. 23 and PES 2018 p. 29.

⁶⁹ World Bank – Education Service Delivery in Mozambique, 2016.

⁷⁰ This information was shared by civil society informers who worked with children affected by fainting.

⁷¹ This idea has been defended by the Association of Traditional Leaders of Mozambique (AMETRAMO) who believe that fainting is caused by government failure to perform traditional ceremonies before construction of schools.

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

Health – MISAU) to investigate and respond to cases of fainting. The concerned team explained that there are mixed factors causing fainting. These range from traditional beliefs, emotional upheaval, collective hysteria, and bad nutrition which interfere with the psychic state of children.

71. When it occurs in schools, fainting affects the child victim, those who witness it and the school community as a whole. This phenomenon occurs in several schools in different provinces in the country, for example at Quisse Mavota Secondary School in Maputo (2010), Manhiça School in Maputo Province (2015), 4th October in Inharrime in Inhambane (2017), Sangarveira in Quelimane (2018), Muchanga School in Lichinga/Niassa (2018), and in Marcelino dos Santos School in Nampula (2018)⁷². The government has not found a solution to prevent and respond to this phenomenon affecting the welfare of the children and the environment in school premises.
72. The Government of Mozambique established three Regional Centres for Inclusive Education (CREI), one in the northern region (Nampula province), one in the Central region (Tete province) and another one in the southern region (Gaza province). These Centres were set up to help generate practices, develop approaches and methodologies for inclusive education. These practices and methodologies must be contextually approved and tested and replicated in schools as part of the implementation of inclusive education. More than 6 years have passed since these Centres were established. However, throughout the country, there are schools lacking documented results produced by any of the established Centres discussed above.
- 73 According to INE 2007, only 4% of children out of a total of 20% of the Mozambican population of children from 0 to 5 years attended the formally recognised pre-school education system. Over the years there have been some developments given the efforts of the government through the approval of the Integrated Development Strategy for Children in Pre-school (DICIPE). This instrument came into effect in 2012. However, as at 2014, only 5% of children benefited. It implies that there is a need to increase coverage of pre-school education system in order to reach out to more children across the country. The government also approved the inclusion of subjects dealing with children's rights within the curriculum for primary and secondary schools. However the teaching of this subjects has not become a reality, yet. In this regard, the authorities should be reminded of the need to fast-track their efforts towards the implementation and teaching of child rights subjects in schools given the importance of these disciplines for children as they need to know their rights and duties in the family context in the context of society, the State and in their relationship with neighbouring communities and people from other countries.
74. The question of sexual abuse committed against school children is another issue that has been worrying. The government has been making efforts to address this problem⁷³. In recent years, and particularly, between 2013 and 2014, we witnessed the implementation of a School Guide for Teachers on "Methods of Signs of Violence and Sexual Abuse committed against Children and Adolescents", as well as the Students School Guide on "Methods for Preventing Violence

⁷² <https://www.dw.com/pr-002/desmaios-coletivos-em-escola-de-quelimane-causam-preocupa%C3%A7%C3%A3o/a-43584202>
http://macua.blogs.com/moambique_para_todos/2010/05/desmaios-de-alunas-quisse-mavota-sob-dias-dram%C3%A1ticos.html
<https://www.dn.pt/lusa/interior/psicologos-acompanham-alunos-apos-desmaios-em-escola-de-mocambique-9402689.html>
<http://arepublica.co.mz/2017/10/28/alegados-espiritos-maos-paralisam-aulas-na-escola-secundaria-4-de-outubro/>
<http://africa21online.com/artigo.php?a=11552&e=Sa%C3%BAde>
<http://www.jornalxopela.com/2018/04/desmaios-misteriosos-na-cidade-de-lichinga/> (accessed on 19 November 2018).

⁷³ Prior to the assessment of the 2008 report, the country had already taken some steps to prevent and to combat sexual abuse in schools. In this regard, we note the passing in 2003 of Ministerial Order No. 39/GM/2003 imposing sanctions on perpetrators of sexual abuse and violence against girls in school. The government also declared 2009 the year of "Zero Tolerance on Violence against Children in Schools" in a multi-sectoral initiative led by the Ministry of Education in partnership with the Ministry of Interior and the then Ministry of Women and Social Action and other institutions such as media, political parties and religious leaders.

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

and Sexual Abuse against Children". These instruments emerged within the framework of the "Zero Tolerance on Violence against Children", an initiative that was implemented in 2009. The government also approved Ministerial Order No. 5/2016 "Concerning measures to be taken against teachers and other employees in the Education Department who impregnate students"⁷⁴. These initiatives are examples proving that the government is aware and the fact that there is awareness within the Education sector itself, about the need to eliminate violence and sexual abuse in schools. Despite these factors of progress, sexual harassment and abuse perpetrated against girls in schools remains a serious problem.

75. Cases of harassment and sexual abuse are still being reported. In Maputo, for example, 9 teachers from four schools were reportedly accused of harassment and sexual abuse of girls in 2017. For what is known, the perpetrators were subjected to administrative and disciplinary measures. However, there is no evidence that they were held responsible, criminally. It is submitted that insofar as the cases reported above are concerned, there was inaction on the part of institutions tasked with the administration of justice due to lack of referral of the matters. Noting that these events occurred in Maputo, the country's main capital city, there is no doubt that the situation is worse in schools all over the country, especially in the rural areas.
76. With regards to leisure and recreation, there are several marked indicators of progress in the country. In many cases progress resulted from government action through the implementation of coordinated and multi-sectoral approaches with different stakeholders including the MGCAS, MINEDH, MJD, MITADER, MINT, and others. Examples of progress include initiatives such as BEBEC championship, school athletics, school Olympics, sports championships in the initiation layers, and the involvement of children in cultural festivals, among others. Some stakeholders have also taken other initiatives complementing government efforts. These include media agencies such as radio and TV; municipalities; CSO's, and actors in the private sector. We commend these developments and call for more broader and inclusive efforts to cover the entire country given its wide dimension. In this regard, it is submitted that the more the number of similar events that take place at the local level, the more the number of children who will be covered across the country.
77. However, throughout the country, there is no efforts to integrate leisure and recreation spaces for children into urban planning at the level of municipalities, in major district centres and in provincial capitals. Such spaces for leisure and recreation are very important for the development of children. In the absence of these spaces, children resort to spaces that are unfit for the leisure and recreation, some of which are unsafe, including roads which are meant for the movement of vehicles.

Recommendation No. 7

- (a) The government of Mozambique needs to increase the number of secondary school to ensure enrolment and continuity for children completing (grade 6 and 7) the second cycle of primary school.
- (b) In order to address teacher absenteeism in schools, the government should be receptive to innovative solutions such as going beyond the involvement of school management and coordination of teacher attendance by ZIP to include school councils, community leaders and children in monitoring regular presence and attendance by teachers. It is important to hold absent teachers to account and particularly those who do not have good reasons to explain

⁷⁴ See, generally, Ministerial Order No. 5/2016 of 27 April 2016 concerning measures to be taken against teachers and other employees in the Education Department who impregnate students.

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

their absence from classrooms. Moreover, it is necessary to assess progress made by each school separately and how ZIP is recording progress in this process. Such assessments must be done regularly the results should be shared with children, the council of the school and with other relevant stakeholders.

- (c) Implement school meal programs to assist children in areas identified as experiencing malnutrition and hunger in order to improve their regular attendance and performance in schools.
- (d) Develop studies aiming to ensure prevention and to find solutions to the problem of fainting in schools. The government should also gather good practices information from countries affected by this problem.
- (e) To improve on inclusive education for children with disabilities the government must frastrack actions to maximize on the goals behind the establishment of the regional CREI, which should already have concrete results documented and ready to be replicated in all schools. Make inclusive education a reality and effective in all schools in the country.

XI. SPECIAL MEASURES FOR CHILD PROTECTION

Children with disabilities

78. The National Plan for People with Disabilities 2012-2016 (PNAD II)⁷⁵ emphasizes on the need to increase the number of children with disabilities in schools in order to reduce the number of children with disabilities outside the educational system. One of the major challenges in this area is removing barriers curtailing children with disabilities from accessing schools. This challenge relates to the infrastructural aspect which is needed to enhance inclusion and it must be accompanied by regular training of teachers on issues of inclusive education and the development of the necessary teaching materials.
79. PNAD II calls for certain specific priority actions for the well-being and development of children with disabilities. These include (i) expanding basic inclusive education system, (ii) ensuring access for children with disabilities to all sub-system of education available in the country (iii) promoting psycho-motor and social development of children with disabilities through their involvement in sport activities, and (iv) promoting the participation of children and young people with disabilities in school sports among others. Although all these priority actions advocated by PNAD II are of great importance for children with disabilities, the challenge is the lack of follow-up of progress made through regular monitoring and evaluation by government (MGCAS). This explains why there is lack of documents speaking to period assessments after ever six month or a year to monitor the implementation of the PNADII.

Recommendation No. 8

- (a) Carry out assessment of the implementation of PNAD II, regularly, with particular emphasis in assessing the implementation of specific actions targeting children.
- (b) Ensure that such assessment proposed above is implemented by MGCAS working together with CNAS and other platforms or initiatives and stakeholders which intersect with or are linked to the coordination of organizations of people with disabilities (e.g. FAMOD, ACAMO, ASSUMO, ADEMO, and others).

⁷⁵ See National Plan for People with Disabilities 2012-2016, hereinafter referred to as PNAD II.

Albinism as life threatening

80. It is no news that there has been recurrent abduction, trafficking and killing of persons with albinism including children for unknown purposes.⁷⁶ It is emphasised that children with albinism are the ones most at risk. Despite the fact that the public condemned this practice strongly and although government's position is in a sense that of protecting persons with albinisms and holding perpetrators accountable through the lens of justice, this violent phenomenon continues to occur in central and northern provinces of Mozambique. The recurrent killings of persons with albinism shows the weaknesses in the system and mechanisms responsible to ensure public safety and those aimed to protect potential victims. It reveals the failure of interventions aimed to curb the problem and to that effect the deep trauma experienced by persons with albinisms as it affects their lives and well-being. It is worrying that in some cases perpetrators are not identified and in other the outcome is not known.⁷⁷

Recommendation No. 9

- (a) Assess progress in the implementation of measures to protect persons with albinism, paying particular attention to the vulnerability of children with albinism due to the high risks that they are exposed to.
- (b) Implement fully the Regional Action Plan on Albinism and ensure that the countries domestic laws and policies protecting persons with albinism are aligned to the standards contained in the Regional Action Plan.
- (c) Define clear public strategies for psychosocial support needed in creating a safe environment for the public where persons with albinism and their families feel free to live without fear.
- (d) Encourage local authorities at district level to act proactively interacting regularly with traditional authorities, religious leaders as well as community leaders in their efforts to prevent and mitigate cultural practices violating the rights of persons with albinism.
- (e) Seek success stories/experiences in other African countries affected by cultural practices violating the rights of persons with albinism and use them where applicable to improve the protection of persons with albinism and particularly children in Mozambique.

The environment and child protection

81. According to the National Institute of Disaster Management (INGC)⁷⁸, the central and southern regions of the country are prone to droughts, floods and epidemiological diseases and these regions and the northern part of the country are all prone to cyclones. Given its geographic location, Mozambique is tropical and a coastal region prone to natural disasters which have negative effects on the society and families, in general, and particularly on children. Research by INGC capturing a 50-year monitoring period highlighted that droughts, floods and cyclones are the natural disasters which have caused most victims in the country. Droughts and floods contributed to food insecurity among families in the areas affected, they also led these families to experience difficulties in accessing drinking water, education, health and security services.

⁷⁶ See Report of the United Nations Independent Experts on the Enjoyment of Human Rights by Persons with Albinism, Mme Ikonwosa Ero, on her mission to Mozambique for detailed account of the scenario and motives behind the killing of persons with albinism in Mozambique, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/433/59/PDF/G1643359.pdf?OpenElement> (accessed on 26 November 2018).

⁷⁷ <http://www.dw.com/pt/aumentam-raptos-e-mortes-de-albinos-em-mo%C3%A7ambique/a-18672615> (accessed on 19 November 2018).

⁷⁸ See a study by the National Institute of Disaster Management (INGC), available at http://www.unicef.org/mz/cpd/references/68-INGC_Synthesis_Report_ClimateChange_Low.pdf (accessed on 19 November 2018).

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

These natural disasters were also the chief cause for damage of social infrastructure (such as schools and hospitals) which are necessary for the well-being and development of children.⁷⁹

82. The Mozambican government, through MITADER and MINEDH, launched a campaign for planting of trees in schools and communities. The campaign is themed 'one student one plant'. This campaign is important given the environmental education aspect it entails, as well as, the aspect of forest conservation and reforestation through planting of trees. We note with satisfaction that the government included in the school curriculum a subject on environmental protection which has contents such as climate change, combating uncontrolled fires, deforestation, damage caused by wildlife, and pollution of rivers, small lakes, large lakes and the sea.
83. There is also a need to protect children affected by extractive industries mainly because these children play in inappropriate places where mining activities take place, and they risk contracting diseases.
84. There are concerns about the implementation of laws. For instance, although statistics were not available, there are concerns about the implementation of the law prohibiting the Access of Children to Places of Night Entertainment and Places of Sale of Alcoholic. To this end, there are reports, almost everywhere, speaking about the existence of premises displaying inappropriate video contents to children, especially in the suburban areas.

Recommendation No. 10

- (a) Ensure regular assessment of the 'one student one tree' campaign at all levels of implementation, including the evaluation of progress and exploration of innovative initiatives in the implementation and dissemination of the campaign with the involvement of the children themselves, their families and local authorities.
- (b) Provide schools located in areas prone to natural disasters with standard templates in order for them to develop their own risk disaster reduction plans. Community disaster management committees operating in areas where these schools are located should be encouraged to interact regularly with the schools and families to assist children at risk, those affected and victimised by the effects of natural disasters.
- (c) Integrate basic components of child protection during emergencies in the training curricula of community disaster management committees. Provide such information for activists who are involved, and integrate such information during their interventions and in the different clusters activated during emergency. Humanitarian organizations involved should also be provided with the necessary component of child protection. Moreover, there should be regular capacity building on climate resilience, including capacity building on agricultural conservation, use of stoves that consume less firewood, trainings on how to address uncontrolled fires, establishment of environmental clubs in primary schools (as a means of preparing children and as a long-term and future strategy); as well as community environmental civic education.

Children victimised by Military and political instability

85. The country experienced moments of political instability and military tension. The military and political crisis reached peaked in mid-2012 and it continued until the end of 2016 when the head of State and the deceased leader of RENAMO party made truce or a cease-fire agreement. The military and political instability affected the movement of people and goods through the main routes linking the country. Some families lost their relatives, and others were forced to move to

⁷⁹ As above.

Implementation of the Convention on the Rights of the Child in Mozambique: Civil Society Report

safer places, several schools and health facilities were closed, and because of the conflict the school year calendar for many children was disrupted. The central region of the country was the main stage of conflict. The government established some shelters for the families affected in Manica, Sofala and Tete⁸⁰ (Vanduzi, Guro, Barúe, Mossorize and Gondola in Manica) provinces. Later on, some shelter centres were closed due to truce/cease-fire and the agreements reached between the political parties involved in the conflict. The closing of such shelter places was motivated due to the fact that the population living there due to conflict started returning to their places of origin. Children composed a large majority of displaced persons who were living in these shelters.

86. In 2017, there was a new outbreak of armed conflict in Cabo Delegado province with signs of religious radicalism characterized by indiscriminate attacks on defenceless families and certain public institutions. There are frequent reports that these attacks against families and public institutions continue in Palma and Mocimboa da Praia districts. As a result, many families are still being displaced into safer places. Children are among the most vulnerable groups affected by the outbreak of violence. The affected areas have an atmosphere of fear and panic, and it is known that hundreds of family homes were burned down.⁸¹

Recommendation No. 11

- (a) Take rapid action to stop any signs of possible continued destruction of home and military instability in the regions affected.
- (b) Restore social services and their normal functioning in areas affected by military conflict, with particular emphasis on schools and health facilities.

Children on the Move

87. According to the National Institute for Refugee Support (INAR)⁸², by mid-2018 Mozambique had 40,358 foreigners with refugee status. About 13,554 refugees live in the main Refugee Centre in Marratane (Nampula province) and others are dispersed throughout the provinces in the country. Most of them come from Burundi, Congo Brazzaville, Ethiopia, Democratic Republic of Congo, Rwanda and Somalia. The UNHRC congratulated the government of Mozambique for demonstrating that when a refugee is well-integrated they do not represent extra costs more than any other citizen. Examples of developments include the granting of permission or authorisation for refugee children to attend schools and the provision of measures for children of refugees born in Mozambique to acquire Mozambican nationality, provisional.

Child in conflict with the law

88. A 2018 study by the Office of the Attorney General (PGR)⁸³ said that in 2015 the country had approximately 15.663 inmates, 1.389 of them were minors in a context where the term minors is used to refer to person under 21, generally. Out of the 1.389 minors who were incarcerated, 461 were in custody or preventive detention (pre-trial detention). There is no information about the number of children who were held in police cells. This can be considered as progress in a context

⁸⁰ <http://viacampesina.org/en/index.php/news-from-the-regions-mainmenu-29/1590-impacts-of-the-security-and-military-situation-on-agricultural-development-in-mozambique> (accessed on 19 November 2018).

⁸¹ <http://viacampesina.org/en/index.php/news-from-the-regions-mainmenu-29/1590-impacts-of-the-security-and-military-situation-on-agricultural-development-in-mozambique> (accessed on 19 November 2018).

⁸² http://jornaldeangola.sapo.ao/mundo/africa/refugiados_em_mocambique_duplicam_em_dois_anos (accessed on 19 November 2018).

⁸³ Office of the Attorney General (s/d), Mozambique children in conflict with the law. Towards a protection strategy. A study sponsored by UNICEF Mozambique and developed by the Centro dos Estudos Sociais Aquino da Bragança. The study covered the following cities, Maputo, Beira, Nampula and Maputo.

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

of a country were 2.329 minors were in detention in 2013 against a total prison population of 17.142 inmates in the same year.

89. The PGR study mentioned above provides a worrying picture about the experiences lived by minors who are incarcerated when they come into contact with various institutions (police, prosecutors and courts) involved in the administration of justice in Maputo, Beira and Nampula cities. What follows is a summary of the concerns highlighted in the study at each phase of the criminal justice system: starting from arrest and detention, police custody, trial, probation or (pre-trial detention) preventive detention, and prison sentencing.
90. Arrest stage: In violation of Constitutional Council decision n. 4/CC/2013⁸⁴, police continues arresting offenders who are not in flagrant violation of the law. Often, the right to privacy protected in Article 68 of the Constitution and Article 302 of Penal Procedural Code (CPP) is not respected, fully. It is also worrying that there are no regulations governing search procedures by police.
91. Police custody: the time between arrest and the legalisation of detention rarely complies with the 48 hours rule prescribed (in Article 308 CPP). Twenty-three out of 54 minors who were interviewed said that they were made to wait in police custody between 6 and 15 days before detention was legalised (formalised). The type of treatment given to inmates in police custody is worrying: detainees are kept in small cells, in many cases these cells are overcrowded and they lack sufficient air or light; detainees are only allowed to leave the cell once a day to use bathrooms and to attend to their basic needs of hygiene; often they have a single meal when family members bring food or if food was given by other inmates. There were also many reports of alleged mistreatment by police and cases where offenders are asked for bribes to be released.
92. Pre-trial detention: during the research it was found that some children had been held in pre-trial detention in proceedings relating to summary crimes (*processo sumario crime*). This is an aspects prohibited by law.
93. The following concerns are evidenced during trial stage: (i) often juveniles are brought to court without proper identification documents making it difficult to confirm the real age of the child; (ii) the criminal records system does not function properly so that repeating offenders can only be identified by chance if officers recognise them as having gone through the criminal justice system, previously; (iii) Often, the right to access to legal defence and legal assistance guaranteed in Article 62 of the CRM and the Act establishing the Bar Association as well as Act 6/1994 establishing the Legal Aid Board of Mozambique is not effective. Those providing defence often argue on the merits of cases without consulting the defendant or plentiful, an aspect that is indispensable for the defence to get a sense of the views of the defendant or plentiful as it may help in clarifying facts in the case. Some children also complained that during trials they were not given chance to express their views freely about the facts. They stated that they were only allowed to give a 'yes' or 'no' answer to questions they were asked; (iv) people who can help interpret Portuguese into national languages and vice versa were not allowed to intervene during trial stage under the guise of avoiding delays during trials stage; and (v) generally, there is little understanding of proceedings. Often, when a prison sentence is proffered it is not suspended. This causes challenges when the child is a repeating offender as he or she must comply, first,

⁸⁴ ⁸⁴ The Constitutional Council decision 4/CC/2013 of 17 September 2013 declared unconstitutional para. 2° Article 291° of the Civil Procedure Code (CPP) alleging that it breaches the rule of law principle excess entrenched in Article 3 of the Constitution. The Constitutional Council also declared unconstitutional the dispensation in para. 3 Article 308° of the CPP (relating to definition of pre-trial detention), for violating the normative rule stemming from the interpretation of section 1 Article 64, in fine, and section 1 Article 61 of the Constitution read together. This decision changed the normative framework on arrest powers outside flagrant violation of the law. To this end, it removed the arrest powers previously accorded to administrative authorities, the investigative branch of police as well as the Attorney General's Office.

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

with a sentence that was suspended and later obey the new sentence (thus reducing chances for the child to escape the jail sentence).

94. During conviction, it was found that most minors received prison sentences for theft and for committing offenses causing bodily harm to others. They were held in detention facilities meant for adults and alleged that, often, they were kept with adults for several hours during the day. They also submitted that they were ill-treated and faced reprisals. The best case experience was found among minor detainees who were held at a Special Prison meant for rehabilitation of juvenile offenders, built in Boane, which opened in 2011 to house offenders aged between 16 and 21 years.

Recommendation No. 12

- (a) Create a strategy to ensure implementation of Constitutional Council decision n. 4/CC/2013 taking into account the impact of this decision on the work of the police, the courts and its impact on services provided by the prosecution, as well as its impact on victims of crime themselves.⁸⁵
- (b) Create a legal framework on police arrest and custody for children based on ratified international law instruments and recognised principles such as the Luanda Guidelines of 2014⁸⁶. Continue to improve prison conditions.
- (c) Ensure that all children and minors have proper identification documents before and even when they come into contact with the criminal justice system.
- (d) Ensure proper screening is done by prosecutors and effective intervention by the judiciary in legalising detention and applying the 48 hours rule.
- (e) Ensure that children's best interests are safeguarded throughout all stages of the criminal justice process.
- (f) Train law enforcement officers on the right to freedom from torture and ill-treatment, inhuman and degrading punishment; and investigate all allegations of torture and ill-treatment and punish perpetrators who commit these offences.

Children of imprisoned mothers

95. In Mozambique, there is only one prison for female offenders, namely the Ndlavela Women's Detention Centre located in Matola municipality in Maputo province. It means that the situation of female offenders in Gaza, Inhambane and other parts of the central and northern regions of the country is not favourable. The scenario shows that there are cases of women who are pregnant, others are waiting to give birth and others who have children in prison facilities. In its report, the government alluded that the women in analysis were given free maternal infant health (MCH) services and other benefits. However, the report lacks statistics on the number of female inmates who are in that situation and it has no information regarding the number of children of imprisoned mothers in the country.

Recommendation No. 13

- (a) Provide statistics on the number of children of imprisoned mothers in the country, including information on concrete type of assistance given to the mothers and their children.

⁸⁵ REFORMAR- Research for Mozambique, *The Impact of Constitutional Council decision 4/CC/2013 of 17 September on intervention of institutions tasked with the administration of justice and on victims of crime*, 2018. Unpublished article. (Copy on file with the authors).

⁸⁶ Available at <https://reformar.co.mz/publicacoes/directrizes-sobre-o-uso-e-as-condicoes-de-detencao-custodia-policial-e-prisao-preventiva-em-afrika-ppja-translation.pdf> (accessed on 24 September 2018).

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

- (b) Implement, in accordance with the CRC, standards that are more conducive for the realisation of children's rights including regional standards such as the African Committee of Experts on the Rights and Welfare of the Child General Comment No. 1 (Article 30 of the African Charter on the Rights and Welfare of the Child) on Children of Incarcerated and Imprisoned Parents and Primary care Givers.

Street children and children in the streets

96. The report of the government speaks about an estimate of 400 children, including street children and children on the streets who were found in Maputo city.⁸⁷ However, the report does not provide (i) statistics on the number of children belonging to either one of the groups listed as they are found in the main cities in the country, and (ii) it is silent on the specific measures taken for the well-being of the children and to recover them from the streets.

Recommendation No. 14

The government must consider undertaking a survey on the situation of children in the streets and street children in the country and provide details on the concrete measures taken to ensure protection and the well-being of the group of children affected.

Protection of children in extractive industry, public works and the business value chain

97. A major evidence highlighting that the protection and well-being of children are endangered in the Mozambican business scenario and other sectors of activities, is the lack of a code of conduct on human rights and child protection policies in the following areas (i) business sector, (ii) environmental pollution, (iii) resettlement, (iv) company supervision in addressing child labour and other issues raised by the business sector which may lead to child abuse, violence and neglect of children. The following table provides real life illustrations of some of the occurrences that took place during the construction of a bridge over the Zambezi River in Mozambique. It also shows the vulnerability that children are exposed to in the context of any such large public construction works and the stories related are applicable to extractive industries and the business value chain.

History Box 1⁸⁸: - The case of construction of the Caia-Chimuara Bridge

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| <p>1. First of all, the local girls come to the river area to help older girls by doing small chores, but eventually they copy older girls and also start having sex. "many of the girls are from here. During the day, some of them go to school and at night they come here to earn a living "(Testimony of a primary school teacher at Chimuara). A local</p> |
|--|

⁸⁷ See paras. 368- 369 of Mozambique combined 3rd and 4th State Party's Report on the Implementation of the Convention on the Rights of the Child, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMOZ%2f3-4&Lang=en (accessed on 26 November 2018).

⁸⁸ The information in the table was obtained based on interviews with informers living in and around the construction site and the small village/district in Caia.

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

businessman owner of a little shabin in Chimuara admitted to profiting from child prostitution. He explained that there are 14 girls working permanently as prostitutes along the river running beside Chimuara, and that they usually these girls were from other areas outside Chimuara. He stated further that, "there is another place just before the river in Chimuara, only a few hundred yards away, where women and girls built their own huts and where they are doing sex work. There are about 14 of them aged between 15 and 35 years. " In the Save the Children survey, it was revealed that girls and young women engaging in prostitution in Caia and Chimuara have a complex sexual relationship network involving multiple partners, including transactional and non-transactional relationships. Those in the age group going from 14 to 20 years hardly speak openly about making money through prostitution, but they talk about having relationships with truck drivers and other drivers who pass in that area. Older girls between aged between 20 and 25 years speak openly on how to get money in exchange for sex. The implication of having "relationships" with a truck driver is that often girls change partners. When her "lover" disappears, she has to find another one to replace him and support her. Some of the girls hope some day they will find a driver who will marry them and take them to cities like Beira, Quelimane or as far as Maputo. A girl living in one of the shacks described her relationship with her lover, a driver, who lives in Nhamatanda. He often passes through in his car. She said that they want to get married and move to Beira. "I want a stone house, not a shack where water enters when it rains. Now I have a cell phone. " *In: Save the Children (2006)*

98. The main concerns include the fact that often communities are not consulted and informed about environmental impact studies; they are resettled in places where they lack basic means of survival, lacking schools and basic rights of children are not considered and respected during resettlement processes. The affected families are exposed to pollution caused by industries. It affects the lives of many children and, particularly their health and development. It is also worrying that exploitation of natural resources is done in a manner that is not sustainable thus compromising community life, survival and development of children and the lives of future generations⁸⁹.

⁸⁹ See Sekelekani study for an overview of how extractive industries impact on the livelihood of local communities in Mozambique, Sekelekani. Sekelekani *'Extractive industries and local community'*, Sekelekani, 2015, available at http://www.sekelekani.org.mz/docs/Industria_Extraativa.pdf (accessed on 26 November 2018).

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

Recommendation No. 15

- (a) Adopt a code of conduct on human rights and develop a child protection policies applicable in business with the view to protect and safeguard children in the extractive industry, within public works and throughout the business value chain.
- (b) Ensure that businesses and corporations respect the rights of communities and implement good practices in accordance with ratified and recognised international law instruments and principles.
- (c) Ensure that businesses and corporations respect and apply international environmental safeguards of the World Bank, among others; and particularly those speaking to extractive industries.
- (d) Make thorough assessment and implement corrective measures where needed when licensing businesses and ensure that companies working in the extractive sector abide to environmental management plans, respect the environmental context in which they operate, and implement recommendations stemming from environmental impact studies relating to their operations. The government should also play an instrumental role in asserting that environmental assessment plans meet international standards on business and human rights and comply with child friendly standards.

Protection of children against child labour

99. About 1.108.334 children between 7 and 17 are involved in child labour in the various sectors of activities in Mozambique. In the Mozambican context, child labour constitutes one of the main aspects of violation of the rights of the child. It prevents children from enjoying their rights to education, health and leisure and interferes with their physical, psychological and moral development.
100. At the national level, efforts were made to combat this problem. For example, the Plan of Action for Children 2013-2019 (PNAC)⁹⁰ was developed and approved calling for collaboration between different sectors and social actors with view to protect children from child labour and other forms of exploitation that interfere with their education and development, including reducing the percentage of children involved in child labour.
101. In 2017, the National Action Plan to Combat the Worst Forms of Child Labour (2018-2022) was approved⁹¹. The plan will be implemented through integrated actions developed by various stakeholders working on promotion of children's rights.
102. Despite these advancements, there are still challenges including: (i) increased number of children involved in child labour; (ii) poor knowledge and limited sensitivity of families in relation to issues around child labour; (iii) lack of programs and policies aimed at eliminating child labour through the provision of alternatives for survival for families; (iv) weak dissemination of children's rights, particularly in the area of child labour; (v) poor supervision given to companies to ensure that they do not employ children.

Recommendation No. 16

- (a) To address the scourge of child labour in the country, the government should apply punitive measures for perpetrators of child labour.

⁹⁰ See, generally, Plan of Action for Children 2013-2019, hereinafter referred to as PNAC.

⁹¹ National Action Plan to Combat the Worst Forms of Child Labor (2018-2022) approved at the 31st Session of the Council of Ministers on 5 September 2017.

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

- (b) Develop policies and programs with clear activities and indicators to prevent and combat child labour. These should include ensuring implementation and respect of measures speaking to access to quality education, health care, as well as measures that ensure that children are treated in accordance with their rights.
- (c) Develop programs that help raising family and community awareness about the problem of child labour.
- (d) Strengthen company oversight in order to ensure respect for children's rights, generally.

ANNEX 1

List of organisations and institutions involved in the process of drafting the report in the period going from 2009 to 2008

| | Nome da Organização/Instituição |
|----|---|
| 1 | Associação dos Direitos Humanos da Criança (ADHC) |
| 2 | Aldeia das Crianças SOS |
| 3 | Associação Nacional Mulher e Criança (ANAMAC) |
| 4 | Arco-Iris |
| 5 | ADDC |
| 6 | Associação Cross Moçambique (ACM) |
| 7 | Associação dos Deficientes de Moçambique (ADEMO) |
| 8 | Associação das mulheres camponesas-Zambezia |
| 9 | Associação de Desenvolvimento da Criança, Educação e Saúde da Rapariga – Zambezia |
| 10 | Associação das Raparigas da Zambézia |
| 11 | Associação dos Jovens de Nacala (AFDC) |
| 12 | Associação das Mulheres de Apoio as Raparigas vulneráveis - Nampula |
| 13 | Associação de Desenvolvimento de Nampula |
| 14 | Associação Mininos de Moçambique (AMDM) |
| 15 | AMETRAMO da Zambézia |
| 16 | AMORA |
| 17 | CMA |
| 18 | Centro de Acolhimento Aldeia da Paz, |
| 19 | Conselho Cristão da Moçambique |
| 20 | Conselho das Religiões de Moçambique – COREM |
| 21 | Comissão Nacional dos Direitos Humanos (CNDH) |
| 22 | Conselho Islamico de Moçambique (CISLAMO) |
| 23 | Centro Dia Mães de Mavalane |
| 24 | Centro Juvenil Ingrid Chauna (CJIC) |
| 25 | CESUITEM |
| 26 | CESC |
| 27 | Fundação de Desenvolvimento Comunitária (FDC) |
| 28 | Fundação Main |
| 29 | GAMA |
| 30 | Hope for African Children Initiative (HACI) |
| 31 | Jornal Magazine |
| 32 | LFC “116” |
| 33 | Liga dos Direitos Humanos (LDH) |
| 34 | Organização Nacional dos Professores (ONP) |
| 35 | Plan Internacional |
| 36 | Pathfinder |
| 37 | RENASCER |
| 38 | REENCONTRO |

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

| | |
|----|--|
| 39 | Rede dos Comunicadores Amigos da Criança (RECAC) |
| 40 | Rede da Protecção da Criança –Zambezia |
| 41 | REFORMAR |
| 42 | REPRCRINA – Nampula |
| 43 | REPSSI |
| 44 | Fórum dos Organizações para os Direitos da Criança(ROSC) |
| 45 | R-DP1 |
| 46 | KUBESSA |
| 47 | YWCA |
| 48 | Yingiseta |
| 49 | Solidariedade Zambézia – Nampula, |
| 50 | Visão Global para Vida |

ANNEX 2

Information on cases pertaining to breach of sexual freedoms involving children in the years 2016 and 2017

1. Judicial decisions made by courts in Tete Province

| Nº | TJP – Tete (2016) | Pending cases | Number of cases lodged | Cases completed | | Res judicata |
|--------------|----------------------------------|---------------|------------------------|-----------------|----------|--------------|
| | | | | Sentences | Orders | |
| 1 | Abuse of children under 12 years | 12 | 35 | 28 | 3 | 16 |
| 2 | Rape | - | 1 | 1 | - | 1 |
| 3 | Sexual acts with children | 2 | 9 | 8 | - | 3 |
| 4 | Indecent assault | - | 12 | 10 | - | 2 |
| 5 | Elicitation of children | - | 1 | 1 | - | - |
| 6 | Use of children in pornography | - | - | - | - | - |
| Total | | 14 | 58 | 48 | 3 | 21 |

| Nº | TJP – Tete (2017) | Pending cases | Number of cases lodged | Cases completed | | Res judicata |
|--------------|----------------------------------|---------------|------------------------|-----------------------------|--------------------------|--------------|
| | | | | Cases completed by sentence | Case completed by orders | |
| 1 | Abuse of children under 12 years | 16 | 36 | 14 | 1 | 37 |
| 2 | Rape | - | - | - | - | - |
| 3 | Sexual acts with children | 3 | 8 | 8 | - | 3 |
| 4 | Indecent assault | 2 | 8 | 9 | - | 1 |
| 5 | Elicitation of children | - | - | - | - | - |
| 6 | Use of children in pornography | - | - | - | - | - |
| Total | | 21 | 52 | 31 | 1 | 41 |

2. Judicial decisions made by courts in Nampula Province

| Nº | TJP – Nampula (2016) | Pending cases | Number of cases lodged | Cases completed | | Res judicata |
|----|----------------------------------|---------------|------------------------|-----------------------------|---------------------------|--------------|
| | | | | Cases completed by sentence | Cases completed by orders | |
| 1 | Abuse of children under 12 years | 9 | 23 | 26 | - | 6 |
| 2 | Rape | - | 2 | 1 | - | 1 |
| 3 | Sexual acts with children | - | 1 | - | - | 1 |
| 4 | Indecent assault | - | 2 | 1 | - | 1 |

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

| | | | | | | |
|--------------|--------------------------------|----------|-----------|-----------|----------|----------|
| 5 | Elicitation of children | - | 2 | 1 | 1 | - |
| 6 | Use of children in pornography | - | - | - | - | - |
| Total | | 9 | 30 | 29 | 1 | 9 |

| Nº | TJP – Nampula (2017) | Pending cases | Number of cases lodged | Cases completed | | Res judicata |
|--------------|----------------------------------|---------------|------------------------|-----------------------------|---------------------------|--------------|
| | | | | Cases completed by sentence | Cases completed by orders | |
| 1 | Abuse of children under 12 years | 6 | 22 | 11 | - | 17 |
| 2 | Rape | 1 | - | - | - | 1 |
| 3 | Sexual acts with children | 1 | 3 | 1 | - | 3 |
| 4 | Indecent assault | 1 | 2 | - | - | 3 |
| 5 | Elicitation of children | - | - | - | - | - |
| 6 | Use of children in pornography | - | - | - | - | - |
| Total | | 9 | 27 | 12 | - | 24 |

3. Judicial decisions made by courts in Zambézia Province

| Nº | TJP – Zambézia (2016) | Pending cases | Number of cases lodged | Cases completed | | Res judicata |
|--------------|----------------------------------|---------------|------------------------|-----------------------------|---------------------------|--------------|
| | | | | Cases completed by sentence | Cases completed by orders | |
| 1 | Abuse of children under 12 years | 5 | 29 | 20 | 12 | 2 |
| 2 | Rape | - | 1 | 1 | - | - |
| 3 | Sexual acts with children | - | 3 | 3 | - | - |
| 4 | Indecent assault | - | 11 | 11 | - | - |
| 5 | Elicitation of children | - | - | - | - | - |
| 6 | Use of children in pornography | - | - | - | - | - |
| Total | | 5 | 44 | 35 | 12 | 2 |

| Nº | TJP – Zambézia (2017) | Pending cases | Number of cases lodged | Cases completed | | Res judicata |
|----|----------------------------------|---------------|------------------------|-----------------------------|---------------------------|--------------|
| | | | | Cases completed by sentence | Cases completed by orders | |
| 1 | Abuse of children under 12 years | 2 | 55 | 34 | - | 23 |
| 2 | Rape | - | - | - | - | - |
| 3 | Sexual acts with children | - | 11 | 7 | - | 4 |
| 4 | Indecent assault | - | 8 | 6 | - | 2 |
| 5 | Elicitation of children | - | - | - | - | - |

**Implementation of the Convention on the Rights of the Child in Mozambique:
Civil Society Report**

| | | | | | | |
|--------------|--------------------------------|----------|-----------|-----------|----------|-----------|
| 6 | Use of children in pornography | - | - | - | - | - |
| Total | | 2 | 74 | 47 | - | 29 |

4. Judicial decisions made by courts in Manica Province

| Nº | TJP – Manica (2016) | Pending cases | Number of cases lodged | Cases completed | | Res judicata |
|--------------|----------------------------------|---------------|------------------------|-----------------------------|---------------------------|--------------|
| | | | | Cases completed by sentence | Cases completed by orders | |
| 1 | Abuse of children under 12 years | 18 | 45 | 33 | 3 | 27 |
| 2 | Rape | 1 | 7 | 6 | - | 2 |
| 3 | Sexual acts with children | 4 | 5 | 3 | 4 | 2 |
| 4 | Acts against the public order | 1 | 15 | 9 | 1 | 6 |
| 5 | Elicitation of children | - | - | - | - | - |
| 6 | Use of children in pornography | - | - | - | - | - |
| Total | | 24 | 72 | 51 | 8 | 37 |

| Nº | TJP – Manica (2017) | Pending cases | Number of cases lodged | Cases completed | | Res judicata |
|--------------|----------------------------------|---------------|------------------------|-----------------------------|---------------------------|--------------|
| | | | | Cases completed by sentence | Cases completed by orders | |
| 1 | Abuse of children under 12 years | 27 | 32 | 23 | 1 | 35 |
| 2 | Rape | 2 | 1 | 1 | - | 2 |
| 3 | Sexual acts with children | 2 | 5 | 3 | 1 | 3 |
| 4 | Acts against the public order | 6 | 23 | 19 | 6 | 4 |
| 5 | Elicitation of children | - | - | - | - | - |
| 6 | Use of children in pornography | - | - | - | - | - |
| Total | | 37 | 61 | 46 | 8 | 44 |