

MOZAMBIQUE

Civil Society Report on the Implementation of the ICCPR (Replies to the List of Issues CCPR/C/MOZ/Q/1)

- ❖ Associação Centro de Direitos Humanos (ACDH)
- ❖ Centro de Estudos e Promoção de Cidadania, Direitos Humanos e Meio Ambiente (CODD)
- ❖ Associação Moçambicana para Defesa das Minorias Sexuais (LAMBDA)
- ❖ Centro de Aprendizagem e Capacitação da Sociedade Civil (CESC)
- ❖ Centro de Estudos de Democracia e Desenvolvimento (CEDE)
- ❖ Centro de Estudos Moçambicanos e Internacionais (CEMO)
- ❖ Fórum Mulher e Rede Contra Abuso de Menores
- ❖ JOINT - Liga de ONG's
- ❖ Liga Moçambicana dos Direitos Humanos (LDH)

With the support of the Centre for Civil and Political Rights

October 2013

**COMMENTS FROM
CIVIL SOCIETY ORGANISATIONS IN MOZAMBIQUE
ON THE LIST OF ISSUES**



REVIEW OF THE INITIAL REPORT OF MOZAMBIQUE

(CCPR/C/MOZ/Q/1)

109th session of the Human Rights Committee

Geneva – October 2013

I. Introduction

1. This joint report is prepared by civil societies in Mozambique who work in the field of human rights throughout the country, which includes: LDH, CEMO, CESC, JOINT, CODD, CEDE, LAMBDA, Fórum Mulher e Rede Contra Abuso de Menores and ACDH. This report is prepared with the support of the Centre for Civil and Political Rights (CCPR-Centre).

11. General information about Mozambique

2. **Demographics:** In terms of demographics, Mozambique has an estimated population of about 23 million habitants: i) 0-14 year olds: 45.9% ii) 15-64 year olds: 51.15% iii) 65 year olds: 3%.¹ In general, the majority of the population is young, with more than 10 million of the population who are children. Of the total 23 million habitants, 54.7% are considered to be poor, and 11% of the population are HIV positive.

3. **Form of government:** Mozambique is a unified and democratic State, which has a form of government with an unusual presidential system, in the sense that a large part of the power is concentrated within the President of the Republic, who is the Head of the State, the guarantor of the Constitution, the Head of Government and the Commander-in Chief of the defense and security forces of Mozambique.²

4. **Legal system:** The legal system is mainly based on civil law. This type of legal system is the principal basis of the rule of law. The law, in most cases, is codified, forming legislative acts that come from Parliament. However, the Council of Ministers also has the power to approve legislative acts in the form of decrees.

5. **Relationship between the three functional bodies:** The State of Mozambique has the principal of separation of power between the judiciary, legislative and executive powers.³ Thus, its tasks and powers are set out in each sovereign public office through the Constitution of the Republic of Mozambique (CRM) and other laws. Nevertheless, there is visible interference in the executive power of the judiciary. It is the President of the Republic who appoints the President of the Constitutional Council, the President and the Vice President of the Supreme Court, the President of the Administrative Court, the Attorney General of the Republic and the Deputy Attorney General of the Republic⁴, which does not guarantee the much-aimed independence of the judiciary, although the Superior Council of the Judiciary has to be consulted.⁵ At the same time in accordance with article 159/e) of the CRM, the President of the Republic can dissolve the parliament.

6. **Political context and history:** After gaining independence in 1975, Mozambique went through a civil war, which ended with a new constitution with democratic provisions in 1990 and with the signing of the peace agreements in 1992.

¹ http://www.indexmundi.com/pt/mocambique/populacao_perfil.html, accessed on the 27th of June 2013.

² Article 146 of the CRM.

³ Article 134 of the CRM

⁴ Article 159/ g) e h) da CRM.

⁵ Paragraph a) e b) of art. 226 of The Constitution of the Republic.

The 1990 Constitution introduced a multiparty democracy, a state of laws and a considerable range of rights, duties, guarantees and fundamental freedoms that were reinforced with the approval of the 2004 Constitution.

7. Mozambique, at the time of writing this report, is staging its fourth election for the President of the Republic, second election for the deputies of the Assembly of the Republic, its third local elections and first election for the Provincial Assembly. However, the electoral processes, as above mentioned, are gradually increasing to evermore worrying levels of abstention, which may raise issues regarding the legitimacy of those elected. This situation is justified by Carlos Serra (2009) who demonstrates that social actors have good reasons for discrediting official institutions, as many surveys have shown. This is not the only case; for example, many promises are made in the campaigns, which increasingly is just a stage act.⁶

8. Currently and due to the partisanship of the State⁷ and trends of a return to a 'one party' State, the Resistência Nacional de Moçambique party (RENAMO, Mozambique National Resistance Party) has been carrying out public threats to return to war, forming military forces in outback areas which has resulted, in around three armed confrontations between RENAMO and governmental forces this year in Sofala Province - Satungira. As a result, at of the time of writing, nine deaths have been announced, which consists of both civilians and governmental forces. Because of this situation and since the confrontations to date, the Government and RENAMO are in process of negotiations to avoid violence against peace in the Country.

II. Constitutional and legal framework within which the Covenant is implemented, right to an effective remedy (art. 2)

Issue 1: In light of paras. (1) and (2) of article 18 of the Constitution (State party's report, CCPR/C/MOZ/1, para. 35), please cite examples, if any, of cases in which the provisions of the Covenant have been invoked before and by the courts of the State party, and to what effect. In addition, please provide information on (a) the availability and accessibility of remedies for individuals claiming a violation of the rights contained in the Covenant, and (b) human rights training for the judiciary in the State party.

9. No information on this question.

Issue 2: Please provide information on the progress made in establishing a national human rights commission, pursuant to the bill approved by the Mozambique Parliament in May 2009, and institution of the Ombudsman. Are they fully operational? To what extent have the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), adopted by the General Assembly through its resolution 48/134, been taken into account and complied with in this process?

⁶ Serra, Carlos (dir), Eleitorado incapturável. Eleições municipais de 1998 em Manica, Chimoio, Beira, Dondo, Nampula e Angoche. Maputo: Livraria Universitária, 1999.

⁷ Example: Eduardo Namburete ex-head of the President's Office of UEM, Ismael Mussa da National Social Services Division of UEM, Benjamim Pequeno, Member of Board of Directors of the Post Office in Mozambique who lost their positions for belonging to the opposition party.

10. Information on the improvement of the creation of the Comissão Nacional de Direitos Humanos (CNDH-National Commission of Human Rights) in accordance with the established draft bill approved by the Parliament of Mozambique in May 2009 and in the functioning of the Ombudsman.

11. The CNDH was created in 2009 and stems from Law n. 33/2009 of the 22nd of December, which approved its Statute. Therefore, the law defines the Commission as being an institution of public law with a mandate to promote, protect and defend human rights in the country (articles 3 and 5). The CNDH was created and is based on the Paris Principles. In September 2012, the CNDH started operating when its 11 commissioners took office. Since then the CNDH has carried out its functions to promote and protect human rights in the country with serious obstacles, due to financial, political, administrative, statutory and legal problems.

Is it functional?

12. The CNDH has been functioning since September 2012 without a budget and without a salary for the staff because the Executive has not provided the budget and the salary for the normal functioning of the CNDH.

13. The CNDH worked without proper facilities for more than the first six months. The Executive only provided facilities for the functioning of the CNDH in December 2012. In June 2013 the Executive withdrew the facilities of the CNDH and only in September 2013, after much pressure and many complaints from the Commissioners and civil society, the Executive provided new facilities for the CNDH. The facilities of the CNDH still require further rehabilitation and equipment.

14. The CNDH still does not have a functioning administrative body that complies with the law and operational rules. For example, the CNDH does not have a Secretary General. In addition, the facilities of the CNDH are still not equipped with office supplies or other basic tools that are required for the institution to function properly.

15. The CNDH is situated in the capital of Maputo and there are no offices or other forms of representation in the rest of Mozambique. There is also a lack of knowledge about the CNDH, not only among citizens, but also among State bodies and civil society organisations.

16. Many citizens and some governmental and civil society organisations still confuse the CNDH with human rights civil societies, particularly with the Mozambique Human Rights League, which is the biggest and oldest human rights civil society organisation in Mozambique. The lack of knowledge about the creation of the CNDH is linked to the fact that four of the eleven Commissioners were originally from civil society organisations and it was the civil society that played a key role in creating the CNDH, which has contributed to this confusion.

17. The fact that 5 of the 11 commissioners of the CNDH, including the President were originally from civil society organizations is one of the factors that has led the government to not provide conditions for the normal functioning of the CNDH, as the ruling party wants to exercise control over all state institutions.

18. The rule of procedure for the CNDH is to set the rules to carry out its mandate, however it has not been adopted. Although the President of the CNDH was democratically elected by his peers, the fact that he does not come from the ruling party is just one of the barriers

against the normal functioning of the CNDH. The CNDH is a State body and generally the heads of state bodies in Mozambique are active members of the ruling party.

19. The above-mentioned obstacles represent various signs, acts and omissions of the lack of political will for the CNDH to function normally.

The Ombudsmen

20. The Ombudsmen is an office established to guarantee the rights of citizens, uphold legality and justice in the actions of the Public Administration. The establishment of the Ombudsmen has been in line with the CRM and the law. The Ombudsmen was elected by the Assembly of the Republic and is functioning under normal conditions but has had some challenges.

21. The Ombudsmen is situated in the capital of Mozambique, Maputo. It has proper facilities and a budget to carry out its functions with a functional defined governing body and wages.

22. The Ombudsmen has some alternative mechanisms of operation in other localities in the country and its office and operation has been disseminated through the radio and television. There is still however, an apparent lack of knowledge and resources allocated to this body.

Recommendations:

- ❖ The State party should strengthen its efforts to ensure that the CNDH enjoys independence and is afforded the necessary resources to be able to effectively implement its mandate in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris principles).
- ❖ The State should provide adequate human and material resources to office of ombudsman to enable it to carry out work effectively.

Issue 3: In light of the commitment made by the State party in the context of the universal periodic review (A/HRC/17/16, para. 88.10 and A/HRC/17/16/Add.1, para.8), please indicate whether the State party has approved a National Action Plan for Human Rights. If so, please indicate the progress made in implementing the Plan in the State party.

23. The National Action Plan for Human Rights has not yet been put into effect because it has not been approved. According to the head of National Human Rights Department at Ministry of Justice the draft of the Action Plan for Human Rights is not finalized yet.

Recommendations:

- ❖ The State should finalise, adopt and implement without delay the Nation Action Plan for Human Rights. The Civil society should fully involved in the finalisation process.

Non-discrimination, equality between men and women (art. 2, 3, 20 and 26)

Issue 4: What measures have been taken by the State party to adopt specific civil and criminal legislation on racial discrimination and to promote the immediate and thorough investigation and sanction of hate speech cases, and racist and xenophobic acts, in particular with regard to employment (CCPR/C/MOZ/1, para. 161)

24. As a general rule, the legal framework and the Constitution in Mozambique (articles 35, 36 and 37) enforce the prohibition of discrimination based on race, origin, place of birth and social ranking. In some areas, especially tourist regions, particularly in the beaches of the Province of Inhambane, Gaza and Cabo Delgado, it is notorious for its racist practices, insofar as black people are limited in moving around, exercising the right to leisure and to conduct other activities, including trading in tourist resorts.

25. In practice xenophobia is almost non-existent in Mozambique and in the few cases that it may have occurred they are very much-isolated occasions.

26. To the detriment of the nation, there is discrimination in employment opportunities, as multinational businesses that operate in Mozambique have adopted admission criteria for hiring foreigners, which means that locals are not hired.

27. The proposal of a revision of the Penal Code relating to discrimination being a crime, demonstrates that there are some advances in terms of there being a will to criminalise the practice of the violation of human rights and fundamental freedoms. The public debate and consultation of the revision carried out by a specific commission of members of parliament is still ongoing. The proposal has not yet been submitted to the approval of the Parliament.

Issue 5: What measures have been taken by the State party to adopt specific civil and criminal legislation on racial discrimination and to promote the immediate and thorough investigation and sanction of hate speech cases, and racist and xenophobic acts, in particular with regard to employment (CCPR/C/MOZ/1, para. 161)

28. People with disabilities enjoy their rights and fundamental freedoms, without discrimination and with the power to have access to legal instruments and policies to exercise and demand the respect and responsibility by a violation of their fundamental rights. Though there has been the implementation of certain laws and policies for those with disabilities, including the Convention on the Rights of Persons with Disabilities that was ratified by Mozambique in 2010, many buildings are still constructed without any regard to those with disabilities, even though the law prohibits such construction projects that do not consider the needs of those with disabilities.

29. There has not yet been the establishment of proper conditions for people with disabilities to have access to education and employment opportunities on equal terms with other citizens.

30. The major challenge is the implementation of these instruments, which still remain weak. State bodies with their specific competencies to guarantee effective protection and respect of the rights of persons with disabilities have many other specific competencies and have demonstrated a lack of capacity and conditions to guarantee the implementation of the instruments and policies to prevent discrimination of people with disabilities.

Issue 6: Please indicate measures taken to protect persons from discrimination and violence based on their sexual orientation. Please report on the number of people who have been attacked since 2005 based on their sexual orientation, including by police or other security forces, and specify whether perpetrators have systematically been prosecuted and punished. Are legislative amendments foreseen to decriminalise consensual same-sex activity?

31. In Mozambique, the law prohibits marriage between two people of the same sex. On the other hand, the Penal Code does not specifically criminalise homosexual relationships. However, there are certain provisions that have terminology, through strained interpretations and with bad faith that could lead to these types of relationships being a crime. Article 70 of the Penal Code criminalises acts that are against nature. It is not, however, clear the exact meaning of “*natural*” in this provision, or whether it could lead to the belief that homosexual relations can constitute acts against nature, as well as, interpreting the law to criminalise people based on their sexual orientation.

32. The challenge is to revise the Penal Code and to clarify consensual sexual activities between people of the same sex so that it cannot be framed as acts against nature.

33. There are no known or registered cases in any legal form of attacks, including physical violence, due to their sexual orientation. Any cases that do exist are isolated cases of psychological violence.

34. Since 2008 the executive branch, particularly the Ministry of Justice, has refused to recognise the NGO “LAMBDA”, a civil society organisation, which defends the rights of homosexuals, even though the law guarantees the exercise of the right of association and moreover, the objective and the ends of the means of its association is not contradictory to the law. Defending rights of homosexuals is not contrary to the law and to public order. There is no appeal against this decision from the executive to recognize LAMBDA.

Recommendations:

- ❖ The State should take all necessary measures to guarantee the exercise in practice of the right to peaceful association and assembly; in particular the State should ensure that CSO can regularly be registered and can freely operate.

Right to life and prohibition of torture and other cruel, inhuman or degrading treatment of persons deprived of their liberty (arts. 6, 7 and 10)

Issue 7: Please provide detailed information on the measures taken (a) to prohibit and prevent acts of unlawful killings, extrajudicial executions, excessive use of force, deaths in custody, torture and other cruel, inhuman and degrading treatment by the police, and (b) to investigate and sanction such cases (CCPR/C/MOZ/1, paras.97 to 101). Information should also be provided on the number of investigations carried out and the types of penalties imposed.

35. The right to life is set in the CRM, in the Common law and in other international instruments that Mozambique has ratified; equally human trafficking is a crime against the law (especially in regards to women and children).

36. Cases of summary executions have reduced significantly since 2011, but the Mozambique government has been weak in preventing the continued practice and systematic acts of lynch mobs who resort to private justice, on the basis that the State has failed to provide justice.

37. In 2008 the Judicial Court of Maputo condemned three police agents to 21 years in prison in a case of summary executions. The case was submitted to the tribunal by LDH, a civil society organisation that defends the victims in this case.

38. In terms of penitentiary establishments, it is important to note that on the 28th of October 2006, two prisoners in the district prison of Manica died as a result of the collapse of a goldmine. The fallen were part of a group of 18 detainees and prisoners who were brought to work in a local ditch intended for the installation of equipment used in the exploration of mining.

39. On the 1st and 2nd of September 2010, the police of the Mozambique Republic used tear gas, rubber bullets and live ammunition during a protest in Maputo against the increase in living costs and prices of staple foods in various cities in the country. To control the protests, the Government sent a police force, including an intervention force, which used excessive force that caused the deaths of around 14 people and many others were gravely injured.

40. Of the 14 people who were killed in the protests as a result of the excessive use of force by the Mozambique police, one of the victims was an 11 year old minor and was the only case in which the State was held civilly responsible by the Administrative Court. There still have not been any investigations carried out to hold responsible the police force that carried out such acts and remain unpunished to this day.

41. On the 10th of January 2012, there was a sequence of protests by the Community of Cateme, in Moatize, the Province of Tete, the police brutally suppressed the protests through the excessive use of force and, disproportionate use of batons (*chambocos*), kicked and arbitrarily detained 14 people, nine of whom were detained for 2 days and the other five were released on the same day.

42. The police force has not been made responsible and remains unpunished for such abuses that consist of grave violations of the fundamental rights of the people,

43. Below are some accounts from victims who have suffered from the excessive use force of the Mozambique police:

- **Benedito António André**, 36 years old, born on the 10th of July 1975, teacher by profession in the District of Namacura, Province of Zambézia, was visiting his children and their mother in Cateme, Province of Tete, was heavily attacked with *chambocos* by two agents of “Força de Intervenção Rápida” (FIR), on the 10th of January 2012 in the backyard of the house. His left arm and hand were severely injured.
- **Gomes António Sopa**, 18 years old, born on the 14th February 1993, was assaulted and ill treated by agents of FIR and then by the Protection Police of the Command of Moatize where he was arbitrarily detained as a consequence of the protests on the 10th January 2012. The agents of FIR searched for the protesters and, to discourage any attempt of continuing the protests in Cateme, made enquiries in the houses in Cateme and broke into the house of Gomes Sopa, and shot at him with tear gas and violently attacked him to get information from him, arrested him and took him to the police station of Cateme.
- **Domingo Joaquim Pacate**, born on the 13th of September 1983, was assaulted and badly

treated, firstly by agents of FIR and then by the protection police of the Police Command of the District of Moatize where he was arbitrarily detained as a result of the protests in Cateme in 10 January 2012. In the afternoon of the same date, on his way from school and passing by the train line in the locality where the protests were staged in Cateme, the victim, Domingos Pacate, was intercepted by agents of FIR who assaulted, handcuffed, and arrested him at the police station of Cateme. They later took him to the Police Command in the District of Moatize where others were also detained. According to the victim, in the Command in Moatize, he was put in a cell, where they pulled down his pants and violently beat his buttocks with batons by two agents of the Protection Police, and was left with grave wounds.

44. Since 2008 the Government has illegally been limiting any attempt to exercise ones rights and liberty to protest by using the excessive use of police forces:

Protests of ex-combatants and of Mozambican former workers in the RDA (Madgermanes)

45. These two social groups have, time and time again, been victims of the excessive use of force by the Police and FIR as a result of their protest marches demanding their rights. The members of these social groups, including their presidents or representatives, were beaten, shot, wounded, detained and arbitrarily judged.

46. The citizen, Hermínio dos Santos, president of the Forum of the Demobilization of the War and its spokesperson, Jossias Matsena have been constant victims of illegal detentions and targets of groundless legal proceedings, due to the persistence of the social group who are protesting against the violations of their social rights. It is common knowledge that members of the Forum for the Demobilisation of the War are terrorized, assaulted, detained and threatened by agents of the FIR, the PRM and the Mozambican intelligence and security service (SISE) whenever the organisation intends to exercise their constitutional right to protest. The Public Ministry turns a blind eye to these illegalities and they are never held responsible for these unlawful acts and violations of fundamental rights. Mozambique Human Rights League has provided since 2010 to date legal assistance to both Herminio dos Santos and Jossias Matsena many times and has always succeeded at least with regard to release them from prison and ensuring their innocence in such cases.

47. In 2011, the workers, private security agents G4S, decided to go on strike demanding for their rights, for better working conditions and salaries. The police was called to intervene to guarantee public order in respect of fundamental rights and freedoms of citizens, but instead they repressed the strikers with brutality and arbitrarily detained them in plain view of the public, which are a clear violation of human rights and fundamental freedoms, the citizens in Maputo have testimony to these facts and the whole country has seen and watched the scene through newspapers and television that have recorded and reported the facts throughout the country. STV a private television and the main newspapers, including Jornal Noticias (public one) Savana and Canal de Moçambique have reported the facts. CSOs, including Mozambique Human Rights league have pressured the authorities to release those arbitrary detained and have asked the Office of the Attorney General to investigate the case through the criminal process to charge the violators (policemen). However, the police officers in question remain unpunished.

48. On the 5th of February 2008 in the city of Maputo, the capital, the citizens decided to protest against the rising living costs and in response the government sent a police and military contingent who used violent and excessive force against the citizens and injured

many of the citizens.

Demonstrations in the scope of public transport crisis

49. In March 2012, due to the transport crisis of small public buses (chapas) and the road problems in the Municipality of Matola, these bus drivers decided to paralyse their activities, which caused havoc and protests between the bus drivers and the road users of the Municipality. The police intervened and with brutality, repressed and detained many people there.

Protests by Opposition parties

50. The opposition parties are usually victims of excessive use of force by the police every time that they exercise the right to protest. One of the political parties of the opposition, Democratic Movement of Mozambique (MDM), was one of the main victims. For instance, the MDM organized a peaceful demonstration on the 18th April 2013 to march through the streets of Maputo, the Capital of Mozambique in which a commission would deliver a letter of rejection to the Interior Ministry protesting the improper use of police force against the opposition and even to win an election, as it happen in the case of the interim municipal election of Inhambane Province in April 2012.

Recommendations:

- ❖ The State should ensure that all complaints relating to torture or ill-treatment are examined promptly and thoroughly and that the victims are compensated.

Issue 8: Please comment on the allegations received by the Committee that treatment contrary to article 7 of the Covenant is used in prisons, including in the cases of 12 prisoners who died of asphyxiation in Mogincual District Jail in 2009 and in the cases of torture that took place in Machava Central Prison and Maximum Security Jail between April and May 2010.

Issue 9: Please provide updated information on the measures taken to address the problem of deteriorating **prison conditions**, overcrowding, poor infrastructure, the lack of medical care and deaths in prison (CCPR/C/MOZ/1, paras.121 and 123). To what extent has the State party used **alternative measures of detention** such as bail, suspended sentences and community service?

51. In general, the prisons in Mozambique are found to be in a state of deterioration without proper food and hygienic conditions. The overcrowding of the prisons is also a feature of the prison system in Mozambique. For example:

- The Annual Statement of the Attorney General of the Republic reported in 2011 to Parliament, there were 15,303 registered inmates in December 2010, 10,353 of whom were convicted and 5,760 were detainees awaiting for trial, which exceeded the total capacity of the prison facilities (6,674 prisoners) and was 129% above normal.
- The Annual Statement of the Attorney General of the Republic reported to Parliament that there were a total of 16,267 registered inmates in December 2011, 10,933 of whom were

convicted and the other 5, 334 were detainees awaiting for trial, which exceeded the total capacity of the prison facilities (6,674 prisoners) and was 243.7% above normal.

- In 2013 the Annual Statement of the Attorney General of the Republic reported to the Parliament that there were a total of 16.113 registered inmates in December 2012, 10.933 of whom were convicted and the other 5, 334 were detainees awaiting for trial, which exceeded the total capacity of prison facilities (6,674 prisoners) and was 129% above normal.

52. In Mozambique there exists a draft law on the sentences and alternative measures to prison since 2011, however, it has not been approved and is scheduled to be discussed in the Parliament. There are no known major measures of the enlargement and improvement of prison infrastructure and of the respective health system.

53. The Ministry of Justice administers the prison system, however, there are institutions administered jointly by the Minister of Justice and the Minister of Interior, like in the case of the Prison of maximum security (B.O) and the Police Command in Maputo who hold these cells for convicted nationals and detainees, who are considered to be more dangerous.

54. The cases of torture in prisons under the control of the Ministry of Justice occur sporadically, however, in the cells where the police hold some detained or convicted nationals, it is frequent. In the case 16/2012 ruled by the 10th section of the Judicial Court of Maputo, related to various crimes of kidnapping between the years of 2011 to 2012 in the City of Maputo, all the accused alleged to having being tortured during the initial phase of investigations by agents of the FIR. However, nothing happened after such allegations and the court said that they have to prove the allegations and the Public Prosecution Service did not investigate the case.

On the question of violations of the rights of prisoners and detainees in the cells of the Police Command of the Republic of Mozambique (PRM), in the City of Maputo

55. In 2012, the District Attorney of Maputo, section 6, carried out legal procedures on the proceedings relating to Jaime Manuel that resulted from a criminal complaint made by LDH following the public complaints relating to the unexplained deaths in the cells of the Command of PRM. The citizens made their views to the LDH about the violations of human rights and fundamental freedoms, that includes the deaths, torture, lack of decent food, lack of medical assistance and medications, violation of human dignity, non-compliance with decisions of the Courts, and the slowness of the intervention of the Attorney General of the Republic to respond to these illegalities and violations.

56. The prison system is under the guardianship of the Ministry of Justice but the cells of the Command of PRM in Maputo, although used by the prison system is under the guardianship of the Ministry of Interior, which makes one question its legal nature and its legality to house detainees and prisoners. During the year 2012 it was notorious for its restrictions or prohibitions of family members, friends and lawyers of visiting detainees and prisoners. Moreover, there always lacks clarity on the number of detainees and prisoners in the cells of the Command of PRM because of excessive secrecy of procedures and all administration, including the treatment of detainees and prisons in these cells

57. Due to these violations, the Bar Association of Mozambique (OAM) and LDH are very

worried, in relation to human rights, about the bad conditions and treatment of prisoners and detainees in the cells of the Command of PRM in the city of Maputo. They have requested the General Command of PRM to authorise visits in the cells of the Command of PRM in the city of Maputo, but they have not received a response.

58. The Ombudsmen initiated a report on the violations and bad conditions and treatment of the prisoners and detainees in the cells of the Command of PRM in the city of Maputo after completing a visit there. The report requested the transfer of the detainees and prisoners to the Prison of Maximum Security of Machava, B.O., which has not yet occurred.

59. The Attorney General of the Republic and the Ombudsmen recommended in 2012 the transfer of all the prisoners from cells of Command of PRM in Maputo. However the recommendation was not carried out.

Recommendations:

- ❖ The State should take concrete steps to improve the treatment of prisoners and conditions in prisons and detention facilities in line with the covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners. The State should consider not only the construction of new prison facilities but also the wider application of alternative non-custodial sentences, such as parole and community service.
- ❖ The State should ensure that all the persons detained in the detention facilities under the competence of the Ministry of Interior (in particular the cells of the Command of PRM in Maputo) is treated in compliance with the requirements set out in article 10.
- ❖ The State should also take measures to guarantee that all occurrences of injury and death in prisons and detention centres are duly investigated.

Issue 10: Please provide information on the measures taken to prevent and combat violence against women, including domestic violence, inter alia, by implementing the relevant legislation, ensuring its effective investigation and sanction, increasing the services for victims of such violence, and improving the statistical system of documentation of cases of such violence. Please comment on information that the Law against Domestic Violence, Law no. 29/2009, (CCPR/C/MOZ/1, paras. 55 to 58) and the Family Law, Law no. 10/2004 (CCPR/C/MOZ/1, paras. 169 to 173) are not respected in practice. Information should also be provided on: (a) the number of complaints received for such cases; (b) investigations carried out; (c) the number of safe shelters and any other resources allocated to assist victims of domestic violence.

Information on the rights of women

60. There have been some political-legislative steps, namely:

- The approval of the Law on Domestic Violence Practiced against Women (Law n. 29/2009, 29th September)
- A National Plan to Combat Domestic Violence (2008-2012) is an improvement, insofar as it does not just involve the State but also NGOs that are involved in this area.

- A Multisectoral Integrated Facility Service Mechanism for Women who are victims of domestic violence (2012) and the Law on the Prevention and Combat against Human Trafficking (Law n. 6/2008, 9th July)
- The support centres for women and children who are victims of domestic violence are expanding to cover all of the districts in the country.

61. There are still many problems that contribute to the lack of respect of woman's right to life, to physical integrity and security.

62. Concerning the Law on Domestic Violence Practiced against Women, there have been studies to evaluate the poor implementation of the law, which found that not only are their various constraints to apply the law, but also there are many agents in the administrative justice system, including policemen, prosecutors and judges that did not approve the law and deliberately boycotted it.⁸

63. On the topic of health, the Protocol of Assistance for Victims of Sexual Violence has not been fully implemented.⁹

Recommendations:

- ❖ Give absolute priority to the revision of the laws that govern the handling of crimes of violence against women, guaranteeing the rights of women are respected in the revision of the Penal Code.
- ❖ Reinforce support centres for women and children in the police force, maintaining their duties by creating a monitory system that severely sanctions cases of corruption. This reinforcement means, namely, creating legislation, budget allocation, the creation of better operating conditions, more resources for the formation of police agents in this field of work, appreciation of the work performance and promotion opportunities that are the same as in other fields of work in the police force.
- ❖ Invest in resources to improve the functioning of the following areas for assistance provided to women who are victims of violence: services for legal assistance, healthcare and psychologists, forensic medicine and shelter homes.

Issue 11: Please provide information with regard to the specific measures undertaken to combat violence and stigmatization in relation to the older women accused of witchcraft.

64. It should be noted that there has been the creation of a draft law of the protection and defense of older women by the Ministry of Women and Social Action that was approved by the Council of Ministers in 2012, which should be discussed in Parliament in 2013. However, it is not in the agenda of the next ordinary session of the Parliament for its approval.

65. In 2011 the National Commission of Protection and the Promotion of the elderly was established, and has been campaigning with parliamentarians for the adoption of the

⁸ Preliminary results of a study that was conducted by the Women Fórum that will be concluded in 2013 on the application of the law.

⁹ As an example see the denounced case of Conceição Osório in the book "Violação sexual de menores" (Sexual violations of minors), WLSA, 2012 and the case related to the report "Fui violada! Exijo justiça!" (I was raped! Demand Justice!), published by l'A Verdade.

above-mentioned law. Importantly, this draft law protects the persons being accused of witchcraft especially elderly woman.

66. The implementation of the protective framework of elderly women, was adopted in the following ways: Policy for Elderly Women and Strategy for its Implementation (adopted by the Counsel of Ministers in 2006) and the National Plan for Elderly Women in Mozambique (2006-2011), supervisory body the Ministry of Women and Social Action.

67. Despite these advances, the respective situation to the rights of elderly women is still very serious. One survey realized by HelpAge International in 2011, with 188 elderly women in some districts in the south of Mozambique,¹⁰ revealed the following: 6 in every 10 elderly women suffered from some form of violence in the 30 days before the interview was held.

68. The interviewed women suffered various types of violence: 40% from theft, 26% reported verbal insults, 24% were threats, 23% were victims of the seizure of their lands and 21% were accused of witchcraft.

Issue 12: Please comment on information before the Committee that regular mutilation occurs in Mozambique and body parts are forcibly removed from children and adults causing death or severe disability, mainly to be used by so-called witch doctors in their traditional medicine, and frequently trafficked between Mozambique and South Africa. What steps have been taken to combat the trafficking of body parts?

69. The stretching of the vaginal labia in the children (considered as the level IV female genital mutilation)¹¹ and the existence under-aged forced marriages, commonly known as “early marriage”, are common in Mozambique-

70. As a positive step, the Law on the Prevention and Combat Against Human Trafficking (Law n.6/2008, 9th July) was adopted in 2008. In addition the proposal to revise the Penal Code includes the crime of trafficking of body parts, which is being considered as an act equated of homicide.

71. Nevertheless, the level of awareness in the communities against human trafficking is still insipient, considering that victim’s relatives also practice human trafficking in Mozambique, especially, in the case of children.

Issue 13: Please describe measures taken to ensure the prosecution of all police officers known to have carried out arbitrary arrests or detentions (CCPR/C/MOZ/1, para. 109), and to provide access to compensation to all victims for such violations. What is the role of the Communitarian Police Councils in this regard (CCPR/C/MOZ/1, para. 133)?

72. The Communitarian Police Councils plays no role in relation with prisons and arbitrary detentions.

¹⁰ Carried out in December 2011 in the province of Maputo, covering the districts of de Boane, Manhiça e Matola

¹¹ Defined as "Type IV - All other harmful procedures to the female genitalia for non-medical reasons" ("End to female genital mutilation. A strategy for the institutions of the European Union", available at: http://www.endfgm.eu/content/assets /ENDFGM_summary_PORTUGUESE.pdf)

73. The police forces charged of arbitrary detention are judged in criminal jurisdictions. However, when it is not known which police officers carried out these acts, the Public Prosecution Service has many difficulties in identifying them.

74. To make things more difficult, the police administration rarely provide the identity of the police officers and the Public Prosecution Service has been in powerless in imposing the delivery of such information.

75. For example, in the case of the illegal detention of Jossias Matsena, a leader of the Forum of the Demobilisation of the War, Matsena was illegally detained in the city of Maputo, accused of acts against public peace and order and later acquitted by the Third Section of the Criminal Court of the District of KaMpfumo in the City of Maputo in November 2011. At present the Prosecutor of the Republic of the City of Maputo has not sought to identify the police officers that ordered and undertook the illegal detention of Matsena.

76. The Constitution of Mozambique (article 58 n. 2) determined that the State should be responsible for damages caused by the unlawful acts of its agents, in the performance of their functions, without prejudice to rights of recourse available under the law. However, when the courts condemn police officers who carried out illegal detentions, usually the courts do not blame the State according to this provision of the Constitution, and in cases the courts do blame the State, they make sentences without fixing or determining the exact value that the State has to compensate for damages caused by a violation of fundamental rights, which makes the execution of the sentences difficult.

77. For example in the illegal detention of Sr. Roberto Lora, the Criminal Court of the District of Kalhamanculo, under n 367/13, the judge condemned the police, but the State took no responsibility to conform to the rule of law.

78. On the 14th of January 2011, an agent of the PRM shot a young citizen, **Ângelo Juíz Nhocoane**, for having refused his arrest without any police mandate or existence of a case against him. As a result of the gunshots he was seriously injured to the point where he has become gravely disabled and still lives with the bullet in his body to this day, as the medical report mentions that the bullet cannot be extracted because he could die as a result. In any case, the operation is very complex and he cannot afford to pay for it. The League of Human Rights denounced the case to the Public Ministry and the case went through to the legal procedures of Section 6 of the Judicial Court of the city of Maputo, case number 22/2011/B. **In May 2013** the Judicial Court sentenced the policeman for his crime to a suspended sentence of two years. It did not however rule on the State for the criminal act of the police agent of the PRM to conform to the rule of law and the unfounded accusations in the defence of the victim.

79. In general, victims of detention and arbitrary arrests are not compensated by the State and the agents responsible for these detentions and arbitrary arrests remain unpunished. For example, Paulo Estevão, more commonly known as *Dangerman* was detained for around 8 years until his judgement in 2008 where he was declared innocent. He was however, never compensated for being detained for around 8 years in a pre-trial detention.

80. On 16 February 2012 an Amnesty International and the Mozambique Human Rights League (LDH) joint delegation spoke to José Capetinho Cossa in the Machava Maximum Security Prison (BO). He had been in the prison ever since he was arrested by officers from

the Mozambique Republic Police (Polícia da República de Moçambique - PRM) while selling sculptures on the side of the streets of Maputo city. He had not been convicted of any crime, nor had he had any kind of court hearing. In fact, it did not appear that he had even been charged with any offence. José Capetinho Cossa told the delegation that despite never having been convicted, he had been detained in the Maximum Security Prison for over 12 years. Other detainees who had been held since 2001 and 2003 told the delegation that he was there when they arrived and that he had not left since. José Capetinho Cossa remained in detention until his release on 4 September 2012 following separate, written interventions from the Human Rights League and Amnesty International on 9 March and 9 August 2012 respectively.”¹² This is yet another clear case of a most serious violation of rights and fundamental freedoms, since, the period of pre-trial detention was extremely excessive and he did not receive any reparation or compensation for the violated right.

Issue 14: Please provide information on the measures taken to effectively implement the legislation listed in paragraph 49 of the State party’s report, which intends to promote equality between men and women. What is the outcome of this implementation?

81. From the point of view of legislation and public policies, Mozambique has approved the main international recommendations and has developed a range of instruments with the aim to protect women’s rights. The CRM defines gender equality as a guiding principle of social relations. In Mozambique there exists a set of measures that aim to protect the rights of women and girls. There is also the Family Law (Law n. 10/2004), the Law against Trafficking (Law n. 6/2008) and the Law on the Promotion of the Rights of the Child (Law n.7/2008).

82. Mozambican government has developed a gender policy, which includes gender strategies in each State sector. Nevertheless, there are still problems on the application of legislation and of public policies of which there is insufficient dissemination and implementation of the legal texts, and there is a persistent cultural practice that violates rights. That is to say conflict resolutions concerning gender inequality or in the sanctioning of offences against the law, there is the continual existence of impunity in relation to the crime of domestic violence against women.

83. The Civil Code regarding hereditary succession is in contradiction with the Family Law that provides for the equality of property. The Family Law imposes important changes for successor rights. In terms of de facto relationships between men and women,¹³ it recognizes heritage and filiations. However, the provisions of the Civil Code regarding hereditary succession¹⁴ do not recognize successor rights for those in a de facto relationship, which means in the event of death of one of the partners, the other person remains unprotected, that is to say, he or she does not have hereditary status and cannot be heir.

¹² This case was reported in the 2012 Joint Report Amnesty International and the Mozambique Human Rights League: **‘LOCKING UP MY RIGHTS’** ARBITRARY ARREST, DETENTION AND TREATMENT OF DETAINEES IN MOZAMBIQUE Published in 2012 by Amnesty International, Index: AFR 41/001/2012 English.

¹³ Article 202 and following of Law 10/2004 of 25 August.

¹⁴ Article 2133 of the Civil Code.

Issue 15: Please indicate the measures that have been taken to bring an end to all traditional discriminatory practices and stereotypical attitudes, about the roles of women and men in the family and society, which impair the equal enjoyment of rights by women and men, and contribute to the persistence of violence against women.

84. The data available reveals that forced marriages is a practice that is maintained and that covers half of all women that are currently married: in Mozambique, 18% of women are married before the age of 15 years, while 52% are married before the age of 18 years.¹⁵ Other studies (Justiniano et al., 2005; Jesus & Matsinhe, 2005) confirm these statistics that forced marriages are a barrier to gaining the right to education. There are no much of concrete measures from the State to overcome this situation. The known measures are some activities of awareness and civic education to the people as to avoid such bad practices.

Recommendations:

- ❖ The state should take measures to combat early marriage by developing national campaigns and community awareness-raising strategies focusing on the consequences of early marriages.

Issue 16: Please describe the measures taken or envisaged to increase the representation of women in decision-making bodies at the local level (CCPR/C/MOZ/1, para. 54). Which measures have been adopted to promote the rights of women in rural and remote areas particularly with regard to poverty, illiteracy, access to health and to social services?

85. Mozambique, in addition to having ratified the Protocol of the African Charter on Human Rights and People's Rights on the Rights of Women, also ratified the Regional Protocol on Gender and Development in 2009 that includes the Political Participation of Women through Articles 12 and 13.

86. The Parliament, as a determining authority, is a sector that accommodates a major percentage of women, with 39.2%, followed by the Justice sector, which accounts for 24.7%. In the media sector, the private and academic industry, women occupy just 19.1%, 17.8% and 17.5% respectively of leading positions.¹⁶

87. However, despite the significant representation of women in parliament as well as their representation in other top positions of that body, they have not yet managed to challenge the power relationship of political power to advance the agenda of women's rights and gender equality. In the context of the lobbying process for the approval of the Law on Domestic Violence, in various stages, women parliamentarians spoke out, in the name of culture and tradition, of the harmful practices of women's rights,

Recommendations:

¹⁵ INE, 2009, Inquérito de Indicadores Múltiplos, 2008. Maputo: INE.

¹⁶ Information taken from the Baseline Study of the EISA

- ❖ Establish the principle of gender parity (50%-50%) in the composition and leadership of all the decision-making positions.
- ❖ Adopt measures of positive discrimination in such a way that bring more effective participation by women in the various spheres of decision-making (quota system)
- ❖ While taking positive discrimination measures, it is necessary to work on the development of innovative female leaders, capable of challenging the established social norms that relegate women to subordinate positions.

Issue 17: Please provide further information on (a) the progress made to prevent and combat trafficking in human beings, (b) the prevalence of this phenomenon, expressed in up-to date statistical data disaggregated by gender, age and country of origin; (c) the number of prosecutions, convictions and sanctions imposed on persons involved in human trafficking, (d) training programmes for professionals involved in implementing the State party's measures against trafficking, including the police, the judiciary, members of the prosecution authorities and social workers and (e) the programmes established to assist victims of trafficking or to raise awareness about this issue. In this context, please provide specific information on the implementation of the Trafficking Act (CCPR/C/MOZ/1, paras. 104 and 105).

88. The protection of the rights to life is provided for in the CRM, in the ordinary laws and in other international instruments that Mozambique ratified. Equally, the crime of human trafficking is provided for in the Law of Human Trafficking (especially in regards to women and children) in particular the articles 10,11,12,13,14,15,16).

89. The Constitution of the Republic prohibits any acts of torture or cruel or degrading treatment, which includes the prohibition of slavery. In the same sense, the African Charter of Human Rights and the Protocols ratified by Mozambique prohibits all forms of exploitation and degradation of people, including slavery and human trafficking. The few known cases of slavery in Mozambique are isolated ones.

90. According to Mozambican Human Rights League many of the cases have indicated the existence of networks that are dedicated to human trafficking, especially women and children, for prostitution or working in slavery conditions in South Africa.¹⁷

Issue 18: Please comment on the information before the Committee according to which 22% of children between ages 5 and 14 are involved in child labour, the 2008 Laws on the Promotion and Protection of the Rights of the Child (Law No. 7/2008 of 9 July) is not effectively enforced (CCPR/C/MOZ/1, para. 11), and the existing law does not cover certain sexual offences against children, including forced sexual relations and sexual exploitation. Please describe further information on the measures taken to eliminate forced labour and the worst forms of child labour (CCPRC/MOZ/1, para. 190), inter alia, investigating complaints related to child labour, prosecuting and punishing the perpetrators, as well as

¹⁷ "Trafficking of body parts in Mozambique and South Africa" (2010/LDH), Published by Mozambican Human Rights League – LDH, 2011

developing and strengthening appropriate legislative measures to address the issue of sexual abuse and exploitation of children.

91. Currently, there are many children on the roads/streets in major urban centres begging and conducting informal businesses.

92. There are many children that render services in informal markets, such as carrying goods and providing cleaning services.¹⁸

93. In relation to the Law on the Promotion and Protection of the Rights of Children in 2008 (Law n. 7/2008, 9th of July 2008), it is progressive and covers various areas of the law. It sets out laws and prohibitions, however it does not include any penalties. The nature of its effectiveness depends on the various laws and regulations that provide guarantees for its implementation.

The government of Mozambique is drafting a National Plan of Action Against Child Labour, seeking a strategy for the country to resolve the phenomenon of forced labour and the worst forms of child labour.

Recommendations:

- ❖ The State should review the Law 7/2008, and ensure that adequate penalties are set out for the authors of violations of the law.
- ❖ The State should take urgent steps to ensure that all cases of sexual abuse of children are effectively and promptly investigated, and that perpetrators are brought to justice.

Issue 19: Please comment on reports that former girl soldiers, as well as girls and young women who were exploited as slave labour or abducted into sexual slavery in armed forces, have often been excluded from programmes for the reintegration of former soldiers.

94. The coalition of NGOs does not have any recent information in regards to this subject.

Right to a fair trial (article 14)

Issue 20: Please provide further information on the measures that have been taken to improve access to justice for the population, particularly for members of ethnic groups disadvantaged on account of their location, language or poverty. What measures have been taken to address the problems of lack of clarity in calculating the court fees, insufficient funding of judiciary as indicated by the Special Rapporteur on the independence of judges and lawyers. Please inform what measures have been taken to enhance capacity of the Institute for Legal Assistance and Representation (IPAJ) and to enable its effective representation in allegations of the State (A/HRC/17/30/Add.2, para. 120)? Please comment on reports (a) that the courts and the offices of the Attorney General have high rates of procedural delays, results in pre-trial detainees constituting a significant percentage of the

¹⁸ Pobreza, Desigualdade e Vulnerabilidade em Moçambique”- IESE 2010, “ Proteção Social: Abordagens, Desafios e Experiências para Moçambique” – IESE 2010

prison population, (b) that significant provisions of the criminal laws were out-dated and that these limit access to justice (A/HRC/WG.6/10/MOZ/3, paras. 25 and 27).

95. In the Constitution, the right of access to justice is established in a framework of fundamental rights for citizens. The Constitution provides the right of access to the courts under Article 62. The Constitution guarantees citizens the right to contest those acts that violate their rights in any competent institution that are judicial or extra judicial (Article 69); the right of petition, complaint and claims (Article 79); the guarantee of an appeal provided by the Ombudsman (Article 256); the right to appeal provided by the Constitutional Council (Article 245) and guarantee of legal assistance for the legal proceedings of a person charged with a crime (Article 62).

96. The Constitution enshrines legal pluralism of which recognizes the various normative systems of conflict resolutions that coexist in the Mozambique society.¹⁹ The concept of legal pluralism, however, is not yet clear and there is little exploration of the alternative means to legal assistance and to conflict resolutions.

97. There are various obstacles for gaining access to the courts/justice in Mozambique, in particular, the high judicial costs, the refusal to accept poverty certificates (*atestados de pobreza*) by the courts, illiteracy and the lack of knowledge of the people's rights, the long procedural system, systemic processing delays, etc.

98. The government created the Institute for Legal Assistance Representation (IPAJ) in 1995, through Decree n. 54/95 of 13th December 1995, to provide legal assistance to citizens who are unable to pay. Despite significant advances in this institution, especially, in its territorial coverage, there are various reports of illegal monetary charges from technicians of the IPAJ and the legal assistance provided is of poor quality. In general, it is not clear the procedures to calculate the cost of court fees in the Code of Court Costs. However the fees regarding Administrative courts are much better and much clearer. For the rest of the courts there is a lack of clarity on the criteria for the payment of court fees and of the use of legislation, which is out of step with the current reality, as well as, the acts of the Constitution, which indiscriminately limits citizens who are economically incapacitated from being exempt from legal expenses. The Decree-Law n. 33548, of 23rd February 1944, is still in force despite it being adopted before independence and in a context of discrimination and colonization. To get access to legal aid one has to first ensure that he or she has the certificate of poverty, which costs 50Mtn, about 2USD, so it is costly itself, but once the poverty certificate is accepted by the court it covers all the courts fees. This is a country wide procedure and is the Institute for Legal Representation and Assistance (*Instituto de Patrocínio e Assistência Jurídica – IPAJ*) that provide legal aid at a national level for different cases, not only for criminal ones.

99. The main constitutional laws regarding the protection of the rights and fundamental freedoms, especially the Penal Code, the Code of Criminal Procedures, the Code of Judiciary Costs and the referred laws of the penitentiary system originate from the colonial period and some of its provisions are contrary to the guarantee of rights and liberties provided in the Constitution and international instruments of human rights that Mozambique has ratified.

¹⁹ Article 4 of the CRM - **Legal Pluralism:** “The State recognizes the different normative and dispute resolution systems that co-exist in Mozambican society, insofar as they are not contrary to the fundamental principles and values of the Constitution.”

100. Despite a significant evolution in terms of human resources, the number of judicial magistrates and of public prosecutors continues to be below the desired number. In Mozambique the ratio of judge/prosecutor is of 1 judge and 1 prosecutor for every 77, 966 citizens- a true obstacle to the access of justice.²⁰

101. The community courts represent the recognition of the customary system of the formal administrative justice system, in accordance with the prevision of Article 4 of the CRM.

102. Despite this step forward, these courts often are at a disadvantage, violating the precepts of human rights. For instance, the Community courts have been, in certain situations, using corporal punishment, given the burning of the house of the adulterer, in cases of adultery, and the expulsion of community members in witchcraft cases, etc. is not always that these courts follow the law, usually they decide in the light of the specific traditions and culture of the communities which sometimes are against human rights.

103. There is an expansion of courts, of the procuracy and the services of legal assistance and legal representation in districts of the country. The Higher Courts of Appeal, one in Maputo, one in Beira and one in Nampula, were created in 2007 and are already functioning, but the slowness of procedures prevails.

Recommendations:

- ❖ The State should review its free legal aid scheme to provide for free legal assistance in any case where the interests of justice so require. In particular the scheme should be transparent and accessible for all the citizens.
- ❖ The State should provide adequate resources to the judiciary to ensure that the delivery of justice is expedited.

Protection of children (article 24)

Issue 21: Please provide information on the progress made to enable the National Council on Child Rights to work effectively, including the implementation of the National Action Plan for Children (2006-2011) and a Plan of Action for Orphaned and Vulnerable Children (2005-2010), with the necessary financial and human resources (CCPR/C/MOZ/1, para. 183). Please comment on concerns that the Ministry of Women and Social Action, which chairs the Council, receives less than 1 per cent of the national budget and has several other tasks under its responsibility (CRC/C/MOZ/C=2, para. 11).

104. The Constitution of the Republic guarantees the paramount interests of the child (Article 47).

105. In April 2008, the Assembly of the Republic approved three laws for the protection of children, namely: Law n. 7/2008, Law for the Promotion and Protection of the Rights of the Child; Law n. 8/2008, Law of Guardianship of Minors; and Law n. 6/2008, Law against Human Trafficking particularly concerning Women and Children.

106. The creation of a juvenile court is still problematic. There is only one juvenile court in the whole of the country, which is located in the city of Maputo.

²⁰ Information got from both the Statement of the President of Supreme Court regarding the opening of judicial year and the 2013 Annual Statement of the Attorney General of the Republic to the Parliament.

107. The National Council on Childs Rights (CNAC) was formally created in accordance with Decree n.8/2009, 31st March, and it is an inter-sector coordination organ that supervises, monitors, propels and assists the implementation of policies and programs approved by the government.

108. In addition to the institutions of the government, there are five civil societies and five religious confessions.

109. The civil societies and religious bodies were elected in the forum of civil society and have integrated into the CNAC, however their integration was never formalized. The rules of procedure of the CNAC was adopted in October 2010, however its' functioning is deficient. This is due to the fact that there is a lack of financial resources, despite the decree referring to the functioning of the CNAC and the CPAC as being a responsibility endowed upon the State budget and assigned to the Ministry of Women and Social Action (MMAS).

110. The CNAC is not a mechanism of communication to disseminate its activities and it for this reason that it is not very well known. It does not have the capacity to accompany and monitor its actions carried out in the field. It needs to strengthen the human resources (there is only one person who accounts for the secretariat and who also has other duties in the MMAS).

111. We understand that the secretariat duties lie in the areas of communication and information, monitoring and evaluation and documentation. The quarterly meetings of CNAC do not occur regularly. Most of the time this depends on the agenda of the members of government. The MMAS also chairs the National Council of Women (CNAM) and the Disabled Persons (CNAD).

112. The MMAS also responds to the target group of seniors. As of September 2013, there has not been any CNAC meeting and there has never been any official notification to the members for the reason of there being no execution. The National Action Plan for Children-PNAC (2006-2011) and the Plan of Action for Orphaned and Vulnerable Children-PACOV were extended till 2011 and, in December 2012, the Counsel of Ministry adopted a new PNAC11-2013-2019. The PNAC11 reflects a fusion of the two last plans, based on the government's five-year plan-2009-2014, PARP-2009-2014, the recommendations resulting from the evaluation of PNAC1 and PACOV's, the contribution from civil society, associates and the Children's Parliament. It is worth noting that the State budget did not provide funding for the functioning of the CNAC. The PNAC11 was also implemented in a sectoral way.

Issue 22: Please provide further information on the measures taken to strengthen a free and sustainable birth registration system throughout the country (CCPR/C/MOZ/1, paras. 135 to 139).

113. Measures taken for free birth registration: the extension of 30 to 120 days for free registration of births. Services for the registration of births has been made available from birth in some healthcare/maternity clinics of the provincial capitals. However, they are not very useful because the services provided do not cover what the majority of the population requires, especially, for expectant mothers and their families. There are strategies for the spreading of free registration of births during the vaccination campaigns of children from birth to five years of age in the country. But it is necessary to highlight that there is low

awareness and in the more remote zones, the distances constitutes as a barrier for people to take their children to be registered in the fixed period mentioned above. We believe that the timeframe for the free registering of children should be up to six years old. If without having birth certificate one cannot register as to access education. That is the reason why parents only look to get birth certificate of their children at age of 5 or 6 as for them to access primary school. It is also important to ensure the nationality.

Issue 23: What steps have been taken to put an end to corporal punishment in all settings, including through the revision of the Child Protection Law to explicitly prohibit corporal punishment? What measures have been taken to encourage non-violent forms of discipline as alternatives to corporal punishment, such as public information campaigns to raise awareness about its harmful effects?

114. Measures have been taken to end corporal punishment in all settings. For example, 260 divisions of Support Centres for women and child victims of violence have been established. The centres were extended to other districts. In 2011 there were 19 centres in provincial towns. The centres provide services for children who have been sexually abused, raped/mistreatment, corporal punishment or corporal offences and missing children. However, the articulation/coordination between the institutions (police, prosecutors, social action, health) need to be improved. In 2012, the centres registered 508 cases of children who suffered from corporal punishment and mistreatment.

115. The penal code dates back to the 20th century, and is in the process of being revised, a process that started between the years 2010. These children mentioned highlight the need to tighten the penalties for those who commit crimes against children from that of 8 to 12 years of long-term imprisonment.

116. The Child Protection Law enacted by the President of the Republic on 16 June 2008 is still not regulated. It only lays down the guiding principles and it has not taken the necessary steps to be implemented. It needs to be regulated to the Convention on the Rights of Persons with Disabilities including children, ratified by the State of Mozambique in 2010.

117. There were awareness-raising campaigns on television promoting zero tolerance for sexual abuse and violence against children, which was under the leadership of Ministry of education (MINED). In 2011 and 2012, civil society organizations (Child network, ROSC) respectively, fostered public debates against child violence in general and especially on children with disabilities. The press (STV and RM) were also involved from 2011 and 2012 in highlighting sexual abuse. This action involved figures of the government and civil society/musicians, children and associates.

118. The Community Committees for the Protection of Children (CCPC) has also been established and comprises of influential locals and children, whose role is to ensure that communities protect their children against all forms of abuses and violence and to identify solutions to minimize the vulnerability of children. The Committees is an ideal mechanism to further protect and take care of children. Nevertheless, the preparation of these plans is slow since the MMAS is without sufficient resources to cope with this necessity. In the country there are around 1400 CCPCs.

119. The scheme of appropriate juvenile prisons is a continuing problem in the country. The establishment of rehabilitation centres for children in conflict with the law is non-existent.

Issue 24: Please indicate the measures that have been adopted to prevent the persistence of harmful traditional practices such as early or forced marriage and polygamy in some areas, despite their prohibition under the Family Law of 2004. (CCPR/C/MOZ/CO/1, para.169). What steps have been taken to ensure the implementation of this law and the involvement of families, community leaders, society at large and children themselves into the awareness-raising campaigns to this end?

Early marriages

119. In Mozambique, the Family Law was approved in 2004 (Law n. 10/2004, 25th August 2004) and represents the culmination of the long efforts in fighting for equality and non-discrimination in the context of the family.

120. However, one of the biggest issues of this law is that the recognition of 'de facto' relationships (article 202 and 203), a major form of engagement in Mozambique, does not impede people to get married.²¹ Studies on this field (Taímo and Sambo, 1997; Loforte, 2000) reveal that in urban areas and rural areas people are likely to live with their spouses for many years before they get married, and in some cases, there are people who do not put their union official. So, the acknowledgement of the marriage partner for the sharing of the goods is a problem in the event where one of the spouses gets married without having declared the union and agreed on the sharing.

122. As a general rule, under n.1 of Article 30 of the Family Law, the minimum age of marriage for both sexes is 18 years of age. Exceptionally, men and women over sixteen years old can enter into marriage when circumstances of recognized public interest occur with the consent of the parents or the legal guardians. On this matter, we are of the opinion that the exemption should be abolished because it could allow for early marriages. It is unclear what could be considered as a 'recognized public and family interest'.

Recommendations:

- ❖ The State should develop measures that aim to prevent forced marriages, with a focus on strengthening the role of families, communities, community leaders, and the role of the State, guaranteeing education for all and mechanisms to raise awareness, as well as, implementing the rights of women, girls and children.
- ❖ The State should develop new scheme and programmes related to the education, with the aim at creating programmes that are not sexist. The State should also fight against the sexist stereotypes and promote the principles of gender equality.
- ❖ The State should create a specific legislation to criminalise early marriages or its inclusion in the Penal Code, taking advantage of the fact that it is in the process of revision.
- ❖ The State should develop a database on sexual violence of minors and early marriages

²¹ Segundo dados do Censo de 2007 (INE), de um total de pessoas entre os 12 até aos 80 anos ou mais, 1.833.060 declararam ser casados, contra 5.206.353 que afirmam viver em união marital.

- ❖ The State should revise each part of the Family Law referring to the purpose of de facto union, the predominant form of conjugal unions in Mozambique, in such a way that takes into account the following situations: the impediment of marriages, rights to food and inheritance.

Issue 25: Please provide information on the steps taken to disseminate information on the Covenant and its Second Optional Protocol, the submission of the first periodic report of the State party, and its forthcoming examination by the Committee. Please also provide more information on the involvement of representatives of ethnic and minority groups, civil society, non-governmental organizations, and the Ombudsman in the preparatory process of the report.

123. The Covenant and its Optional Protocol have not been sufficiently disseminated and used by the State of Mozambique. There is no evidence of significant dissemination of these international instruments and the same applies for civil and political rights cases in which the Mozambique State rarely makes reference to these instruments in its decisions.

124. The police authorities including the judicial magistrates and the public ministry have little knowledge about these instruments. After all, in the jurisprudence or court decisions of human rights, international human rights instruments are hardly referred to.

125. Civil society organizations (CSOs) have hardly been involved in the preparatory process of the report of the government. Very often CSOs are called to participate in meetings to validate the report as a means of legitimizing it. Also, very often, CSOs only have access to the draft of the report in these meetings, of which there are no means to allow for any significant contributions due to the lack of knowledge of the document. The Mozambique report submitted to the Committee of Human Rights of the UN for the review of Mozambique in October 2013 was not subject to the participation of civil society.