

REPORT OF THE CIVIL SOCIETY ABOUT THE IMPLEMENTATION OF THE CONVENTION OF THE CHILDREN'S RIGHTS

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ABBREVIATIONS AND ACRONYMS

UNRHC – United Nations Refugees High Commission

AIM – Mozambique Inquiry Office

AR – Republic Assembly

UN CRC - Convention on the Rights of Child

CRM – Constitution of the Republic

CC - Civil Code

CP – Penal Code

EP-1 – Primary Education First Level

EP-2 – Primary Education Second Level

FAMOD – Mozambican Federation of Deficiency Bearers Organizations

FDC – Foundation for Community Development

ESG 1 e ESG 2 – Secondary Education First and Second Levels

IDS – Demographic Inquiry and Health

INAR – National Institute of Support to the Refugees

LDH - Mozambican Human Rights League

LPC – Law on Children's Protection

MMICAS – Ministry of Women and Social Action

MEC – Ministry of Education and Culture

MT – Metical

OSC – Organizations of the Civil Society

OIT – Labours International Organization

ODM – Millennium Development Objectives

ONU – United Nations Organizations

PARPA – Acting Plan for the Reduction of Absolute Poverty

PNAC – Children's National Acting Plan

PACOV – Acting plan for the Orphan and vulnerable children

GDP – Gross Domestic Product

PQG – Government Quinquennial Program

UNDP – United Nations Development Program

TRAV - Anti Retroviral Treatment

UEM – Universidade Eduardo Mondlane

UP – Universidade Pedagógica

UNICEF - United Nations International Children's Emergency Fund

Executive Summary

The civil society report on the implementation of the children's rights should analyze the state of the children's rights from the year 2002 to the year 2006 because this is the period covered by the Government report. But considering that such an analysis is outdated and will not have any meaningful effect on actions to be taken, this civil society report also includes more recent information. This report takes into account the heights of the Convention on Rights of the child.

This report has been prepared by a group of 67 NGOs led by Rede da Criança, all of which also had previous access to the Government 2002-2006 report. It is accompanied by a Children's report which also informed this civil society report.

Regarding the general measures of the implementation of the children's rights, the report concludes that in general, the Government of Mozambique has included the principles of UNCRC in the internal legislation. Such an inclusion is showed by the existence of different laws namely: the Family Law (Law nr. 10/2004, of 25 of August) which includes the care giving family, increase of the legal age for marriage, changes on the adoption regime, etc. In relation to the Civil Registration Code (Law nr. 12/2004, of 8 of December), the extension of the free registration period from 30 to 120 days and the decentralization of the registration competencies, can be marked as important legislative steps. The Labor Law (Law nr. 23/2007, of 1 of August), reformulated the child working regime (e.g. it allows the child to get her own salary, and establishes norms to respect the child physical capacities, health and working period). The Law which prohibits infants going to night clubs and the prohibition of alcohol to children under 18, are other important legal instruments. Such laws include norms which are favorable and compatible with the UNCRC. In the legislation we find important instruments which are sensible to children's problems, namely the National Acting Plan of Children (PNAC), The Action Plan for the Orphan and Vulnerable Children (PACOV), the Government 5 Year Program (PQG), the Poverty Reduction Strategic Plan (PARPA II 2006-2009), the document on the Millennium Development Goals (MDG or *ODM*). Regarding the definition of Child, the internal legal code has not changed the civil majority age (21), when the formerly mentioned laws are in agreement with the UNCRC and consider that a person over 18 is an adult. This is confusing and leads to difficulty in applying and understanding some court decisions.

In regard to the general principles, the report highlights the principle of no-discrimination, the best interest of children, the right to life, survival and development, and highlights the need to consider the opinions of the children. In legal terms, the principle of no-discrimination is secured. However, when it comes to implementation, much has to be improved. As an illustration, we can take the construction of schools which do not consider children with special needs (e.g. ramps) and the inequalities found between rural and urban children regarding health basic assistance. Concerning the right to life, survival and development, the present report calls much attention to the strategies for prevention against any kind of abuses of children which can later interfere in their development. There are more means for punishing people who can be involved in abuses rather than means to avoid such abuses. It is therefore recommended that the authorities, in coordination with the civil society and involving children in decision making, should place much effort on avoiding children abuses.

In relation to civil and political rights, the access to the right of a name, nationality and identity preserving, is devoted in the law. However, the registration regime is still not "citizen friendly", because: (i) especially in rural areas, the registration authorities are located far from the communities; (ii) after the 120 days, the fee can be considered high by poor families with more than 1 child; (iii) the families do not understand the benefits of registration before the children need the

birth certificate to enter secondary school; (iv) the regulation is very difficult for a father that was not present at registration and later wants to correct the situation and legalize his paternity.

In relation to freedom of expression and the access to appropriate information there is a failure of the Government on providing public libraries adequately equipped to serve children and the mechanisms to ensure the participation of children in issues that affect them are not clearly established. Besides, sometimes the media includes images and stories that are not adequate for children and this is felt by the families and the society as interfering with the normal development of the children; but the civil society acknowledges that this issue has to be addressed jointly by the authorities and the society.

In regard to the freedom of thought, conscience and religion, freedom of association and meeting and the right to privacy protection, some irregularities have to be mentioned. For instance, regarding the freedom of conscience, the services do not have regulations to manage a situation whereby a child does not accept to participate in some activities due to a specific reason, e.g. religious believes (situation is common in schools). Regarding the freedom of association and meeting, fundamental rights devoted in the Constitution, it is recommended that the internal Legal Code should adopt procedures allowing the legalization of associations of children, with no adult intervention. Referring to the right to privacy, the present report refers cases in which the privacy of children has been violated and no action was taken against the violators by the responsible entities.

Taking into account existent data showing that there are cases of torture and maltreatment in detention sites, the civil society consider that children between the ages of 16 and 18 can potentially be affected on their right to not be subject to torturing or other cruel and inhuman treatments because they can be judged and sent to prison.

In relation to the family environment and alternative care, the report recommends that the Government introduces, in its diplomatic norms, the obligatory duty to assist on unification of children with parents who live out of Mozambique. As for alternative care, currently the Government in cooperation with partners and civil society support has some institutions that provide alternative care. However, due to the insufficiency of the budget allocated to the Ministry of Women and Social Action (about 1% of the national budget), there is a much reduced capacity of the Government to guarantee the alternative care efficiently, so the public institutions providing such services depend on partners support rather than on the National Government Budget.

Protection of the child against abuses and negligence is poor, although some efforts held by the authorities have been producing positive results in the protection of children, especially in the cases of children's abduction and selling. However, the prevention of these cases and of other abuses demands that the State improves the inclusion and participation of the whole society (including children) in the definition and the implementation of prevention strategies. Especially by focusing in the prevention of the abuses within the family where the child lives. Up to now, it is found that the State capacity is very limited, almost inexistent.

In regard to health and well being, the report points out that efforts to the create conditions to respond to children with special needs are still very insufficient. This situation is more visible in the education sector, although some actions to encourage inclusive classes have been implemented. However, in these cases, inclusion is not universal because one group can include needs for which the school does not have means to respond to. So, there is a pressing need to invest in supplying adequate facilities to ensure the adequate inclusion of children with special needs in education and in other public services.

Considering child's health and health services, at national level there are significant improvements in: (i) infant mortality; (ii) vaccination coverage; (iii) prevention of intra-uterine transmission of HIV, (iv) number of childbirths in hospitals, etc. But it has to be recognized that in some locations, there are serious limitations on the services to assist and care for children. Distance to the health units as well as the number of medical doctors per person, continue to be serious constraints.

HIV and AIDS are one of the main causes for the children's vulnerability. Therefore many resources from State budget and from cooperation partners are directed for mitigation of the impact of HIV, as well as for treatment and welfare of the infected/affected children. In regard to treatment, the State has a special line of ARV treatment for children and specific procedures for tracing HIV in the prenatal phase, reducing the cases of intra-uterine infection. But the outreach of these services needs to continue increasing towards the children living in more remote areas.

In regard to Social Safety, services and assistance facilities for children and appropriate standards of living continue shadowed by some constraints such as: (i) the low budget (less than 1% of the total) allocated by Government to the Ministry of Women and Social Action, who is responsible to ensure the social protection (including children); (ii) the weak institutional capacity of this Ministry to adequately use the few resources allocated; (iii) the high poverty level in which many families live, hindering the effective operation of the traditional chains of social protection among the communities – there are examples of families caring for orphaned children that use them for work in the house and for earning money, in clear situations of child labor exploitation.

About the right to education and vocational training, we recognize the Government efforts in the expansion and rehabilitation of the education facilities. However, thousands of children are still deprived from the right to education. In addition, the poor quality of education is a deep concern of the society. We consider that this poor quality is originated by deficiencies in the teachers training system and curricula, including the short period of training (recently reduced to 1 year, mainly to respond to the pressure of the MDG, regarding the number of children in schools). On the other hand, the massive affluence of children to schools originates big classes and a high rate of students/ teacher, decreasing the time of contact between the teacher and the student. Therefore, it has to be acknowledged that a main issue to be urgently addressed is the quality of teaching in the country.

The Administration of the Juvenile Justice is currently facing major challenges. We consider that the most serious are the existence of only one Juvenile Court in the capital of the country, Maputo and the lack of judges specialized in children issues in courts, which does not ensure the protection of children, especially when in conflict with the law.

There is no intervention of the government authorities to punish cases of child exploitation (sexual, labor, e.g. selling in informal market) by the family but this is also linked to the concept of the society that the issues inside a family are not to be dealt by anyone else. So the issue has to be jointly addressed by strategies designed with involvement of the civil society and children.

Referring to the abuse of drugs and other substances, it is noted that the consumption of alcohol by youths under 18 is increasing. This happens at public places without much action from the authorities, despite the existence of a law to prohibit the practice. But the acceptance of alcohol consumption by the family is also high, so the implementation of the law by the authorities must be part of a joint civil society/ government strategy to decrease the alcohol and drug consumption as they can increase violence in the society.

Sexual exploitation, abuse, trafficking and selling of children are the cases involving children that the media have paid more attention to. And the authorities have reacted, although in many situations late and not as serious as was expected. Also to mention that there are many cases that the society considers as abuse or traffic but the authorities disqualify them as such, discouraging those who courageously denounce child trafficking and selling of children.

Lastly, the civil society considers that the documents referring to child rights need to be more widely and adequately disseminated, and that there is a need to design more appropriate strategies (with involvement of government, civil society and children) to ensure the respect for child rights and protection of children.

BACKGROUND

Projections from 2004 estimated the population of Mozambique to be about 19 million inhabitants in 2008, with almost half of which (approximately 9,613,470) being people under 18¹. However, the 2007census revealed that the country has little more than 20 million inhabitants.

Following the peace agreement between government and RENAMO in 1992, Mozambique became a successful example of postwar reconstruction and of social and economic recovery in Africa. The effect of peace on children's rights is notable: recovery of the education and health net that had been destroyed by the war; no more military children in the country; economic growth and improvement of the levels of human development². An example is that, from 2004 to 2008, 1796 new schools of several levels were built and close to 40 thousand teachers were contracted³.

Between 2002 and 2006 the third general elections (2004) and the second autarkical elections took place. In general, despite some irregularities⁴ that did not affect the final results, the elections were considered free and fair⁵. In the autarkical elections of 2003, 5 autarchies were won by the opposition (RENAMO) and the results were peacefully accepted by the ruling party (FRELIMO).

It is important to understand that the social and economic environment of Mozambique is typical of a country that until 1992 was considered the poorest of the world and with a high illiteracy rate. The National Report of Human Development of Mozambique showed that, in 1997, almost 70% of Mozambicans lived under absolute poverty; the country had one of the worst indexes of the gross domestic product (GDP) per capita in Africa and a 13% annual economic growth⁶. In recent years, the available data indicate that the poverty in Mozambique reduced significantly from 69.4% (in 1997) to 54.1 % (in 2003), showing the efforts of the Country to improve the population's living conditions.

In this context of absolute poverty, the fulfillment of the human rights finds serious barriers, leading to situations of intentional or negligent violation of the children's rights, namely the economic

¹ Projections of 2004. Source www.wordlbank.org.

 $² Cfr. www.siteresources.worldbank.org/MOZAMBIQUEEXTN/Resources/long_summury_Mozambique.Port.pdf$

[&]quot;getting the unlikely, sustaining the inclusion in the economy in growth"

³ Ouestions to the Government, IX section of RA. December of 2008

⁴ For example, in Balama in cabo delgado province, the "Diário Notícias" writes that in one of the tables were registered 1000 electors but in the ballot boxes only 400 votes were deposited. Indeed, in the poster, the candidate of Frelimo-Armando Guebuza had 2028 votes against 40 of the candidate of Renamo – Afonso Dhakama. (have a look at: Diário de Notícias, Saturday, 11 of December of 2004).

⁵ Cfr.www.europa.eu/bulletin/pt200412/pt106022.htm

⁶www.comunidadesegura.org, article of 4/10/2002.

exploitation of children within their own family, the growth of the phenomenon of street children and other social difficulties affecting the child⁷.

CHAPTER I - GENERAL MEASURES OF IMPLEMENTATION

Convention on the Rights of the Child and the National Legislation

The **Constitution of the Republic of Mozambique (CRM),** establishes that international conventions enter into effect after their ratification and publication in the Government Bulletin (*Boletim da República*) and that they have the juridical value, as for articles 17 and 18 of CRM⁸. The Child Rights Convention was integrated in Mozambican legislation through the Resolution no. 19/90 of the Parliament (*Assembleia da República* - AR), on October 23.

However, there is no definition yet as how to deal with cases of conflict between internal legislation and international conventions, although the Committee on the Rights of the Child recommended the clarification of this after the presentation of Mozambique Initial Report on the Children's Rights⁹. The Constitution of the Republic simply states that international norms have the equivalent juridical value of the respective ratification instrument. But there is no clarification on how the juridical value of a resolution manifests in the practical terms.

The Constitution creates a favorable juridical image to the accomplishment of the children's rights, namely, through the article 11 lines c), d), e) and f), the chapter of the fundamental rights more particularly, the article 47 (on the children's rights), 120 (paternity and maternity) and 121 (the childhood).

When Mozambique presented its Child Rights Initial Report (2000) in Geneva in January of 2002, the Committee on the Rights of the Child recommended reformulation of the internal legislation in order to concur with the UN CRC principles. Thus some internal legislation in response to children's rights has been approved, namely:

Code of Civil Registration -2004 – this juridical instrument, apart from renewing some norms of the old law, it also expand the free birth registration period from 30 to 120 days after the birth and it introduced decentralization of registration activity, aiming therefore to take the birth registration services closer to the citizens through the registration centers.

The Family Law nr. 10/2004, of August 25 – improves the previous regime, introducing important changes in the paternity regime, imposing the same treatment to children who are born in registered and in not registered marriages (including the out of marriage relations), recognizes the foster families as a way of facilitating alternative care, increasing the nuptial age, etc. In general, this law complies with UNCRC principles. But its implementation has shown some difficulties, especially in cases of unofficial (factual union) married women in which, with the death of the husband, the widow faces difficulties to demand for matrimonial patrimony, affecting the children access to their property. In the Juridical Attendance Desk of the Human Rights League (GAJ/LDH), two cases called our attention on this aspect.

Maria and $João^{10}$ met each other when each one made their cross-border business between Mozambique and South Africa. They decided to make up a family. The couple bought a plot of land

¹⁰ Nick names, but talking about real stories

⁷ Cfr. Poverty in childhood in Mozambique. Analyses of situations and tendencies. United Nations, Mozambique(UNICEF), 2006

⁸ For further developments, see Gilles Cistac. Validity and Entry in to force of the international conventions ⁹committee on the rights of child. Consideration of reports submitted by states parties. Under article 44 of the convention concluding observations of the committee on the rights OF THE child: Mozambique, 11

and built a house where they lived together for more than 15 years. They had two children, a boy and a girl aged 14 and 11 respectively. During the time they lived together, the family economy grew a lot due to the investments that they did together. They had a water supply borehole and supplied water to the neighborhoods and graphic company. Certain day, João violently expelled Maria with the two children from their home. Maria took the case to Court demanding for division of their wealth, but the Court declined the inquiry with the following justification: "Before this union João was officially married with another woman and had not divorced her officially. The marriage between Maria and João was not recognized within the family and consequently Maria lost the right to share the wealth she constructed with João. Currently Maria lives with her children in a house of her relatives.

In another case, Joana lived in factual union with António. They had three children. Both got infected with HIV. António died of AIDS. After her husband's death, the relatives of her husband expelled her and the children from her home, taking over the property house and vehicles. Joana is visibly weakened by the disease and the anguish of having lost her goods and tried to solve the case for four years. Lately, she does not go to the GAJ/LDH so it is suspected that she might have perished from the disease, leaving the children without a any protection or shelter.

Child Protection Law nr. 7/2008, of July 9, This law translates UN CRC principles into internal child protection legislation.

Juridisditional Organization for Minors - Law nr. 8/2008, of July 9 - This law establishes bases for the protection of children in criminal and civil matters. In the light of this law, "the main objective and purpose of the Juvenile Justice Administration is to ensure assistance to children and to prevent crime involving juvenile through application of protection measures"

Law against Human Trafficking –Law nr. 6/2008, of July 9, to prevent and counteract human trafficking, particularly women and children.

Labor Law nr. 23/2007, of August 1st. This law brought some innovations in the child's domain, especially in the protection of the maternity and paternity, as well as in the regime of the child recruitment. But it lacks the regulation of some aspects, namely the work regime for children between the ages of 12 and 15.

The Convention of the children's rights and national policies

The policies with direct incidence on the child are namely the Children's National Action Plan (PNAC) and the Action Plan for the Orphan and Vulnerable Children (PACOV) both published in 2006. As for the first, it determines the establishment of a Child National Council, an organ similar to the one that was also recommended by the UN Committee on the Rights of Child to centralize the design and follow up of policies and programmes for children. This Government body has not been created yet (referring to 2009). UN Committee on the Rights of Child also recommended the strengthening of the human and material capacity of the Ministry of Women and Social Action, but between 2000 and 2006 this Ministry has received less than 1% of the total

¹¹ cOMMITTEE ON THE rIGHTS OF CHILD. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES. UNDER ARTICLE 44 OF THE CONVENTION CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE rIGHTS OF THE CHILD: mOZAMBIQUE, 13, a).

government budget. In 2009 the trend continues as the budget for this Ministry is 0.9% of the total budget ¹².

The Government's five years Program (PQG), approved by the Parliament through Resolution 16/2005, 11th May, foresees, regarding children: (i) the publication and implementation of the National Action Plan for Children (PNAC); (ii) family integration of the orphaned and abandoned children; (iii) the integration of street children and of children involved in child prostitution; (iv) the prevention of juvenile delinquency; (v) the facilitation of the children's civil birth registration; (vi) the establishment of institutions to assist children under 5 years; the combat against violence and sexual abuse of children. The inclusion of the child rights in PQG 2005 -2009 is commendable. Most of the legislation considered then has been approved but much is still to be done regarding its implementation, especially in relation to birth registration and its decentralization. Little or almost nothing was done in relation to the street children's phenomenon, apart from civil society initiatives. Anyway, it is also commendable that, understanding that with such a small budget share for social welfare Government has little capacity to implement effective actions and social child protection will continue to weak, government facilitates an encourages NGOs to undertake child protection activities. But these can only have a very small, local coverage and Government will need to take its responsibilities.

The 1st national PRSP, PARPA I, was in force between 2001 and 2005 while PARPA II was approved for 2006 to 2009. PARPA I was a document approved without much civil society participation and did not integrate many subjects that are considerably important for the society. Specifically in relation to the child rights, PARPA I was too poor. In this aspect, negative mark should be attributed to the Government due to not having acted in accordance the child best interest in the approval of an instrument as important as PARPA I. However, this fault was corrected during the preparation of PARPA II, which defines very clear goals regarding the children's rights, namely: (i) for the maternal child health that includes the reduction of infant mortality, the improvement of children's weight, the reduction of maternal mortality and the provision of health care for HIV infected mother and children; (ii) for the education that prioritizes the improvement of the rates of conclusion of the primary school as the main objective; (iii) for the child protection which focus in the legal reform.

Millennium Development Objectives (ODM) –some of these goals, mainly in the area of access to health care, education and sanitation of the environment, will not be achieved before the year 2015. For example Demographic and Health Inquiry data (IDS)-1997 shows that the infant mortality rate (under 5 years) was of 219 per 1000

The budgetary evolution, from 2002 to 2005, points out that the Ministry of Woman and Social Welfare receives under 1% share of the State Budget. This indicator is very negative, because it reveals that in practical terms, this sector, with legal mandate to protect and to attend vulnerable groups such as children, receives little attention from the State.

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¹² FDC,UNICEF. Joint Programme for Child Rights, Budget Briefs, nr 6, November 2008.

CHAPTER II - DEFINITION OF CHILD

Mozambican judiciary law mentions two concepts linked to one another but not clearly distinguished: child and minor. According to UNCRC a child is all person under 18 years old., but in Mozambican legislation different instruments establish different ages so in some cases, it may become difficult to act under the definition of child.

The Civil Code establishes civil majority at 21 years, what means that all people with less than 21 years old can not exercise their personality rights, except for some exceptions granted by the article 124 of the Civil Code (CC). It is obviously important to clarify that the civil majority has to do with the capacity of exercising autonomous rights and not exactly with the concept of child.

However, political majority is gained at the age of 18 years old. For example, from this age the person can vote and can be voted for political positions except for the President of the Republic (to be eligible a person must be at least thirty five years). This age concur with the age define in UNCRC and in the Constitution of the Republic of Mozambique (CRM).

In regard to the *criminal imputability*, according to the Penal Code (CP) a child under 16 years old can not be criminally imputed. Thus, according to this criminal age limit and considering the UNCRC child definition, children can be held criminally responsible for their actions. Anyway, the Mozambican Civil Code (which ages from 1886), is undergoing revision but there are no signs that the age limit for imputabily will change.

In regard to the maximum age for being a child, it is recommended that the Government of Mozambique harmonizes and clarifies the internal legislation. It is confusing that the Constitution of the Republic establishes 18 years as the limit age for being a child and in the other hand the Civil Code insists that civil majority starts at 21. Although the application domains are different, it would make much sense if the political and civil age majority started at 18 years old, to allow full citizenship and youth participation in the society matters.

CHAPTER III - - GENERAL PRINCIPLES

The Principle of No-discrimination (article 2)

All the children should benefit from all the rights without any discrimination of any kind and the State has the obligation to protect all children against all discrimination forms. This principle is in the article 35 of CRM (Universality of Rights), as well as in the articles 2 and 6 of the Mozambican Child Protection Law. The practical implementation of this principle implies the creation of conditions which will allow all children to benefit from the rights contained in UN CRC, without exception.

In practical terms, the implementation of this right holds distortions. The no-discrimination, as corollary of the principle of equality, imposes that the State creates the same conditions and opportunities for all children. The analysis that is done on the different rights contained in UNCRC shows inequalities, above all in the access to health services in relation to rural children. In the field of children with special needs public buildings (schools hospitals, bus stops and even on the buses) are not constructed with appropriate facilities for children with disabilities. The weak visibility of the application of the inclusive education, for example the specific difficulties faced by albino children in classrooms, which are not conveniently taken into account in schools.

The best interest of the child (article 3)

Despite the fact of being formally in the internal laws, there is evidence of non-inclusion of this concept (The best interest of the child) in the process of decision making concerning to children.

The principle of the best interest of the child is not visible in the action plans of the Government institutions, and it is not part of administrative practice. On the other hand, very often, the judges do not consider the impact of the decisions taken on the concerned child when deciding on the disputes of adults for the paternal responsibility over a child.

There is an evident need to integrate the children rights ad the notion of the best interest of the child, not only in the duties of the public institutions¹³, but also in families. If the concept is well understood in the family, the civil servants will apply it easily, as a fact of life.

The right to life, survival and development (article 6)

Every child has the right to life and the State has the obligation to ensure the development and survival conditions. In accordance with CRM, everyone has the right to life, liberty and security. This principle is also contained in the Child Law, article 11 of the Child Protection Law, in the principle that the right to life implies respect to another person's life, to the child's physical and moral integrity as well as their integral development. The Mozambican legislation also protects the intra-uterine life, prohibiting and punishing criminally the eugenic abortion.

The survival and the child development are shadowed by the countless cases of violence against the child in their own family. The survival and the child development, as well as the high index of poverty affecting children are still worrying. Recent data illustrate that, in 2003, 63% of the rural children and 20% of the urban children lived under absolute poverty¹⁴. Concerning the access to the drinking water and basic sanitation the situation is still worse. Moreover, in the same period of 2003, about 50% of the Mozambican children were in a situation of severe privations¹⁵.

There have been reports of many cases violation of the child's physical integrity through severe corporal punishments, imposed by the parents, relatives and teachers. In Chokwé for example a father chained the son for several days, presumably because he played very far from their home. In Beira, a father beat the daughter violently, apparently because she had stolen 500 meticais.

Still within the issue of survival and development and with respect to the judicial decisions¹⁶ towards the right in focus, the analysis of some lawsuits show a great difference in the procedural handling, especially when the process is in the Juvenile Court, or when it is in a Court without a board of experts in other areas.

In the above mentioned cases, the child physical and moral integrity was seriously affected. The intervention of the State authorities was reactive rather than preventive. In fact, there is no properly structured system that allows the prevention and prosecution of occurrences of abuses against children in their family and in the society, as it happens in other countries.

Respect towards children's opinions (article 12)

The respect towards children's opinions implies the right of the child's participation in decision making. Such participation could be institutional or individual. Mozambican State accepts and

¹⁵ Cases reported by various Medias

¹³ Cfr article 5 of law 30/2001, of 15 of October

¹⁴ The aforesaid.

¹⁶ LDH Juridical Assistance Office

supports the existence of the Child Parliament and so as of other children organizations. However, in general, the participation of the civil society in public decision making is weak.

There is no systematic organization of interaction with the civil society during the planning and budgeting phases of the Government programs. But also in civil society organizations, the opinions of the children are generally not heard or considered. The existence of the Child Parliament, although an important and commendable attitude from Government, is not enough to guarantee the respect for the children's opinion. Besides, it must be ensured that the institution acts without manipulation or tokenism and currently there are no systems to monitor this.

In fact, the current Child Parliament has been constituted with a methodology of assignment of their members under adults' choices rather than an exemplar electoral process, with inclusiveness issues in the process. The children themselves question the legitimacy of the members of the Child Parliaments, showing clearly the need to changing the methodology for selecting the members and the activities and openness of the Child Parliaments itself, as a way of facilitating the inclusion of the children's ideas in the governing process. Some Civil Society organizations and international agencies are starting this at local level, and it must be acknowledged that some governmental staff has given genuine support to the programmes. But there is a need for a systematic approach that can be derived from expansion of the existing experiences and best practices.

Families do not give relevance to the child's opinions. The conception of the child's immaturity is the justification for their exclusion in decision making, such as, the choice of schools, the education type and religion. One issue that hinders this right is the difficulty to balance the consideration of the children's opinions and the guidance needed for children.

CHAPTER IV - CIVIL RIGHTS AND FREEDOMS

The right to a name, nationality and preservation of the identity

The right to a name, nationality and preservation of the identity is regulated by article 26 of the Child Protection Law (LPC) and the procedures for the birth registration are regulated by the Civil Registration Code of 2004. The registration is free if done during the first 120 days of life of the child (against the previous 30 days). Although it is understandable that the Government wants to establish mechanisms to encourage the families to register children as early as possible, this is a fundamental right of the child, and as such it should be a free service. This would make registration of children easier for very poor families, especially in the current situation when many children in the country are not registered.

It is clear that good results have been achieved with the initiatives implemented by the Government in partnership with Civil Society (SC) to increase the number of registered children (including registration campaigns and awareness/ information of families to understand the importance of registration and its mechanisms). But these campaigns are not a sustainable system. It is therefore urgent to create a national system of free registration, sustainable and available in the most remote areas of the country. Considering the inadequacy of the budget allocated to the registration offices, it is recommended that the Government allocates more human, material and financial resources for the component of registration in the budget of the Ministry of Justice. The allocation of funds should consider as a priority the decentralization of the service, as it is already determined by Law – make the service available to the citizens as near as possible.

The registration of children also finds some constraints when there is a need for a court intervention¹⁷. Mainly because in these cases, if they are not happening in Maputo City, the registration will be made by the common courts, not by juvenile courts. Then, considering the lack of preparedness and sensitivity towards children issues (these are not Juvenile Courts), these processes are handled without the necessary priority or urgency. In cases where the family is not in dispute, these registrations should be done on the Administration system (similarly with the inheritance registration system). This may also affect the preservation of the child's identity, especially in the cases whereby the mother needs to register the child in the absence of the father. In such cases, usually the mother resorts to their own relatives to register the child and when the father decides to register the paternity the registration requires the intervention of the courts (even in cases that are not litigious).

Not forgetting the importance of the child's registration in the protecting of their rights, some special cases could be introduced in the legal system to avoid negative consequences to many unregistered children (cases of school registration, inheritance, etc). It is recommended that the government analyses with civil society the possibility of using (in the absence of the registration) other means to proof paternity, as long as they are accepted by the child's community.

Freedom of self-expression and the right to the access to appropriate information (article 17)

There are no legal restrictions to the freedom of self-expression and access to appropriate information. However, there is some discomfort of the adults in relation to the information transmitted to the children by some media. So the society in general was pleased to read that the Child Protection Law establishes the duty of the State to regulate films and television programmes, in what concerns the appropriate information for children. But this is still not implemented and it will probably need joint work of government and civil society to be effective, as it also involves much education of families.

Examples are: (i) some soap operas transmitted in hours that interfere with the child's school or house chore matters; (ii) the aggressive content of the soap operas, largely tending to eroticism and pornography; (iv) musical videos with inappropriate language and scenes¹⁸.

Besides, hindering the right to access appropriate information, there are few Public Libraries and the existent ones lack general knowledge bibliography with adequate content to appropriately inform children. As an example, the National Library in Maputo has only 700 books with appropriate contents for children. The lack of resources to establish libraries is acknowledged, but it is recommended that stronger efforts should be addressed to this, jointly by Government and by civil society.

Noticeable is the fact that UNICEF has reported, in 2003, that 39% of the Mozambican children suffered an absolute privation of access to appropriate information¹⁹.

Freedom of thought, conscience and religion, freedom of association and meeting, protection of the privacy (articles 14, 15, 16)

Referring to freedom of conscience and religion, it is known that there are no legal restrictions. But there are a few known cases of conflict situations involving and negatively affecting the rights of children, especially from some religious communities. For example, some religions do not accept

¹⁷ Analysis of judicial processes, GAJ/LDH, 2008.

¹⁸ Interventions of the Workshop, 14 of November of 2008, Hotel Mocambicano

¹⁹ Childhood Poverty in Mozambique. Trends Analysis. Summary

certain symbols of the State. As the "orientations on obligatory tasks" document from the Ministry of Education considers an obligatory duty the singing the National Anthem, at least in one school in Quelimane City children from a religion that does not accept to sing the Anthem have been considered absent from school and failed to pass due to excess absence. This lack of communication between parents, religion and government has to be addressed in a participatory way, for the best interest of the child.

In relation to the protection of the privacy, following the UNICEF guidelines document "ethical guidelines on reporting child", and reviewing the reports on children published by various media it is considered that the press, especially the Television, does not pay sufficient attention to preserve the child's privacy in their reports. For example, the report on the 17 children abused by Turkish citizens in Maputo city was a media spot light and no care was taken to preserve the victims' identities. No disapproving pronouncement came from the National Council of Social Communication, proving that the child rights dissemination and information has to be much strengthened and monitored.

As for the freedom of the children's association, there are a significant number of children's organizations. However, as the law of the association demands *the capacity of exercising the rights* for the registration of the association (meaning that the associates have reached majority), the children do not have possibility of proceeding with the registration of their associations, unless they resort to the adults.

The right of not being subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment (art. 37 (a)).

Although cases of mistreatments and children's tortures in prison have not been officially announced, the fact that there are reports of cases of torture in jail houses and in police stations²⁰ and that children over 16 can be imprisoned²¹ opens the possibility of children being subjected to torture. Mechanisms should be put in place to ensure that this is not possible (like special conditions of imprisonment of children). To combat the torture practices will also contribute to the protection of the children against torture.

The same can be said in relation to other cruel and inhuman treatments. The jail houses do not usually supply data on such practices but monitoring visits of the civil society have called attention to the phenomenon of mistreatments (physical and psychic).

By law and specifically under the Internal Regulations of the Ministry of Education the use of corporal punishment is prohibited. But all over the country there are numerous cases of children receiving corporal punishment, very often not reported because parents do not feel openness and are afraid of the teachers' retaliations against children.

²⁰ Cfr Annual Report on Human rights, LDH, 2006, pgs 35. See also report on executive summary in Mozambique, Amnesty International, 2008.

²¹ Many times, the lack of documentation allows the existence of 16-year-children arrested short periods before they are released. Besides, the criminal law considers that a person of 16 or over can be imputable and imprisoned, although it has to be detained in special facilities, and separated from the adults.

CHAPTER V - FAMILY ENVIRONMENT AND ALTERNATIVE CARE

The parental guidance (art. 5), the parental responsibilities (art. 18, paras. 1 and 2) and recovery of maintenance for the child (article 27, paragraph 4)

In relation to parental orientation the society considers that it is an absolute right and duty of the parents to provide guidance to their children. But there are different concepts for guidance and what it involves as well as for rights of the children and there is very little awareness of the benefits of child participation. Corporal punishments are very often considered as the only way to guide ("discipline") children. There are even stories published on the Media²² indicating cases of severe physical punishments to children in the family.

Children are often used as companies of adults with disabilities, especially visual disabilities. This is another way of violation of children's rights in the family. As said in other sections, these cases are not usually addressed by government institutions as they are considered locally as "family issues".

The moral and material assistance to children, especially in disaggregated families, is an issue that also hinders the fulfilment of the rights of children. When the children are given to the mother's care, it is very common that she has to struggle to ensure the maintenance of the children, if it has been determined by a court sentence. If the father works in the informal market or he does not work, the situation my have no solution and often the mother turns to prostitution as the only way to maintain the children.

It is important to organize innovative educational programs targeting parents to promote the children's rights, the good practices of exercising the paternal power and the parents' legal duties. This should be a joint responsibility of the Government and civil society, led by the Government as the main guardian of the children's rights.

The separation from parents (article 9)

The Mozambican law guarantees the child's contact with the parents in the cases they are separated or they do not live in a structured family. The law ensures that the child spends equal time with both parents. But in practice the court's decisions are not always implemented and it is common to have cases returning to the court because one of the parents does not allow the contact of the child with the other one.

The family reunification (article 10)

The Ministry of Women and Social Action has a mandate to assist abandoned / lost children and to re-integrate them in the family or to find a "substitute" family. This has happened significantly immediately after the war (1992) and it happens after disasters. Isolated cases happen frequently especially in cities to where children are brought by relatives with the promise of "giving them a better life and sending them to school". It also happens with children who are repatriated from South Africa (either because they migrated alone or accompanying relatives or because they were trafficked). They spend a short period in an institution and the unification is prepared by the Ministry staff, having a psychological assistance where possible. Follow up to check the result of the reunification is a responsibility of the Ministry's local staff but they are often faced with lack of resources.

Cases of request of parents in different countries to reunify with their children are not common.

²² Analyse of Notícias Newspapers kept the National Library between the years 2000 and 2006.

Children deprived of a family environment (art. 20) and Adoption (art. 21)

Currently, with the increase of the death rate, especially due to AIDS, the numbers of children who are deprived of a family environment have increase substantially. The attendance is difficult and not always effective.

The new law of family introduces the foster family as one of the ways to guarantee alternative care to the child deprived of a family environment. There are also some public and private institutions for receiving the children, especially in cities. All of them face many challenges to maintain the children in a healthy and safe environment while simultaneously educating them.

In the rural communities it is often found that if the children have an "older" sibling, they live alone but a neighbour will be responsible to oversee the household. The support to communities to be able to assist these children is a priority in the Ministry of Social Action and is also prioritized in instruments such as the National Plans of Action (for Children and for OVC). Civil Society organizations and international partners have also been developing programmes towards this objective and the coordination has been improving, especially in the Multisectoral OVC Committee led by the Ministry of Women and Social Action. The already mentioned lack of financial capacity of this Ministry hinders the effectiveness of the social support supplied.

Abuse and negligence (article 19)

The Government has been working to improve its capacity to respond to cases of child abuse and negligence. A very important measure has been the establishment of the Unit for Women and Children of the National Police, working with Units to Attend Women and Children Victims of Violence in each Police Station. In province where the Government is partnering with other organizations the improvement in the capacity of these units is notable. What is still a big challenge is the effective coordination among all Government and non government actors to ensure a better implementation of the child's rights.

These units, working together with the Social Action and Health authorities, have been increasingly receiving report and claims of abuses (with a big proportion of sexual abuses) many of which perpetrated in the family. The attendance of the child victim is very often stopped because the mother is ashamed and takes the claim out. So, more effective ways to prevent child abuses is an absolute necessity.

Another difficult challenge is that the court decision can take so long that when the accusation of the abuser is made the community does not even has access to it and any possible exemplar learning from the case is lost. Stronger coordination with the justice institutions (based on stronger sensitization of legal and paralegal staff) is also an urgent need, especially considering that, due to prejudices related with HIV and AIDS, the number of children abused sexually in their families has been increasing because of a myth that says that a sexual relationship maintained with a virgin will eliminate the virus of HIV.

CHAPTER VI - BASIC HEALTH AND WELFARE

Children with disabilities (art. 23);

There are few concrete activities responding to the needs of children with disabilities. Inclusive education is one of the main priorities defined by the Ministry of Education but its implementation is very poor: (i) only very few schools have facilities adapted to children with physical disability; (ii) teachers prepared to deal with children with mental, sight and hearing disabilities are few,

although there is a special programme in the Ministry to train teachers to attend children with special needs: (iv) It has been acknowledged by the Ministry of Health that the inclusion of albino children is difficult because the schools are not sensitive to the difficulties that these children face²³.

The Forum of Mozambican Associations of People with Disabilities considers that most of the children that are out of the educational system, the ones that repeat or abandon the school during the first years of the primary education are children with disabilities or with learning difficulties that request special attention.

In general, it can be said that the needs of the children with disabilities are not addressed with the priority that they require.

The child's health and services of health

According to the Government's report, the number of health centres increased in 70% in 2006 with capacity to offer integrated health care for the children²⁴. This is confirmed by independent sources that give a positive note to the government activities.

Indicators of Development of the World Bank (2000 -2005) reveal that there were progresses in terms of services of health in the child's²⁵ domain. The data indicate that the tax of total fertility (child births for woman) developed in the same period in an average of 4, 4. The rate of child mortality (for 1000 alive born) developed from 122 in 2000 to 100 in 2005 and the infant mortality (under 5 deaths per 1,000 children) reduced in the same period from 178 to 145. The predominance of the malnutrition (weight per age) developed from 25% to 23, 7% in the same period²⁶.

In the same sense, from 2002 to 2006, the rate of institutional child births developed from 43% of births to 48%²⁷. However, in spite of this evolution, it is concluded that many child births still continue to take place out of the hospitals, being cultural factors and insufficient distribution of the hospitals (long distances between residence and hospital) as the main causes.

Between 2000 and 2005, there was an evolution in the percentage of vaccinated children, from 71% to 77%. The Government has given special attention to the public health related to the children, including frequent programs of sanitary civic education. In the prenatal care, the mothers receive information and training about sanitation and infant care. Still, more attention has to be given to young mothers, as the age of motherhood is decreasing, and the child mothers have very little knowledge about child care.

However, there the health system struggles with lack of specialized personnel. For instance, in the province of Zambézia where there are more than three million inhabitants (with about half being children) there are 3 (three) paediatricians only, distributed in two cities (Quelimane and Mocuba); as for maternal child health technicians, the data indicates that there are a little more than 20 (twenty) technicians, which is really short for a province like Zambézia.

One of the biggest problems in relation to the access to the health services is the long distance separating most of the population and the health centres, mainly in the rural areas. Collected data

²³ Seminary of Constitution of Association of Albinos sponsored by MISAU, 2009. Television News, TVM

²⁴ Ministry of Planning and Development. Matrix on the main Accomplishments of the Government in 2006 perspectives for 2007. In www.portaldogoverno.gov.mz/docs gov www.worldbank.org.

²⁶ Although with different data the study of the Food Security in Mozambique publihed in 2007 indicates that "in Mozambique children under 5 years old show high levels of chronical malnutrition (46%), high levels of low weight (21%) and acceptable levels of intense malnutition (5%). In Baseline Study *of SAN in Mozambique*. *SETSAN*, 2007. ²⁷ Source, MISAU. Brief information, 2004 and 2005

from Zambézia reveals that, on average, people walk about 30Km to reach the nearest health centre and many of them die before arriving there. This factor contributes significantly to the child births out of the hospitals.

In spite of the notable efforts from Government, confirmed by social indicators reveal, there are still many children with severe deprivation of their right to health.

HIV and AIDS

The problem of HIV/AIDS in Mozambique is very serious. Quoting the UNICEF²⁸ Report, 700 000 children with less than 15 years are infected with HIV, with 90% of them being vertical transmissions. The data indicates that there are about 446.099 orphaned children of which about 233.004 children are orphaned due to AIDS (52.2%). Forecasts estimate that that up to 2010 Mozambique may have a total of about 1.2 million orphaned children, many of them resulting of AIDS.²⁹

In the field of the maternal child health, in the prenatal care, the Government is implementing a programme to prevent the HIV transmission from mother to child. In the phase of the prenatal care the pregnant women are advised to test for HIV. If positive, the antiretroviral treatment is guaranteed with view to avoiding the contamination of the baby. Although the coverage level of this service has increased substantially during the last years (speaking in 2009!) there is much still to do. Similar situation is happening with the access to the antiretroviral paediatric treatment.

IDS 2003, shows that there is a very low level of knowledge of vertical transmission of HIV, what implies the need for intensifying educational activities for communities (especially women) focusing on the risks of transmission from mother to child and the importance of prenatal care. Civil society partnerships with Government are essential to ensure a wide coverage of these educational programmes.

Considering the older children, the Health Ministry, with various partners, is increasing the facilities and services of SAAJ, the youth friendly attendance services that supply information and counselling to young people about health care, focusing on prevention of HIV infection.

Social security and childcare services and facilities (arts. 26 and 18, para. 3); and appropriate Standards of living (art. 27, paras. 1-3).

From the legal point of view, there is no social security addressed specifically to children. The social security that includes children is the social security scheme for employees. This law provides a health subsidy in the cases that a parent misses the job to accompany a child interned at hospital³⁰. But, as the majority of Mozambican people are unemployed, the scheme contemplates a minority of children in the country. But there is an ongoing effort to join efforts from the Government, civil society and international agencies to improve the national social security schemes, especially focusing on children.

The program of social assistance targeting children refers fundamentally for the orphaned and other vulnerable children (included in PACOV) and consists mainly on the distribution of goods like food

²⁸ Cfr. Childhood Poverty in Mozambique – A Situation Trend Analysis, Maputo, 2006, p.119.

²⁹ Cfr Report on the National Seminar about Orphans and Vulnerable Children, MMAS, Maputo, 2000

³⁰ Article 1. Decree no 46/89, 28th December, provides the regulation about the Social Security.

and school material³¹. On 2006 this Government programme assisted 39.659 children, 32.331 of which were orphans and vulnerable children. The Social Assistance for children also appears as a cross cutting issue in various other sectors, providing free access to education, school support to OVC and free access to health services.

In all of the cities, a high number of children of and in the street are seen. There is no clear strategy to solve the problem, mainly because it entails a multitude of issues, causes and factors.

Referring to networks of social security, a special positive reference has to be made to the NUMCOV (Multi-Sectoral Group of Support to the Orphaned and other Vulnerable Children). It is a forum that congregates several governmental service providers, international agencies as well as national and international NGOs all working in programmes of support to OVC, aiming to improve and to coordinate the global activities in this area.

As for the appropriate standards of living, the statistics show that 54% of Mozambican families live below the line of poverty³², with less than 1 dollar a day. These families include children, for whom it is impossible to guarantee an appropriate standard of life. It should be a country's priority to ensure to these children the basic social assistance together with a conducive environment to their development and sustainability.

Regardless and not withstanding initiatives in course, the child's social protection is not universal, Therefore, social assistance to the child should deserve a larger attention by the State.

CHAPTER VII - EDUCATION

In 2004, the estimated 9,613,470 under 18 years was served in 2006 by 10,700 schools. In the same period, there were 3 public universities, namely Eduardo Mondlane University and Pedagogic University. For 2009 it is estimated that the number of schools will have increased to 13,000 primary schools and to 9 public university level institutions, with 380 primary schools introducing the second level of primary education. This shows that the State is dedicating a strong effort to improve the access to education.

To achieve the millennium goals in education, the State has been increasing the school infrastructures³⁴, revitalizing the professional education and extending the university level education to other regions of the country. Between 2004 and 2008, 1.796 new schools of several levels were built and about 40 thousand teachers were recruited. Several international institutions, as well as the civil society in the country, evaluate the social indicators of Mozambique positively, including the area of the education. But there are issues that need to be addressed.

According to the article 28 of CRC, the basic primary education should be obligatory and free. However, the Mozambican Law no 6/92 does not establish the regime of obligatory education and consequently it does not define the age and the obligatory education level. This is a constraint that

Ministry of Planning and Development. Matrix on the main Accomplishments of the Government in 2006 perspectives for 2007. In www.portaldogoverno.gov.mz/docs_gov.

³³ Data presented by the Ministry of Education to the Media and published in Noticias Newsper, 6th January 2007.

³⁴ Cfr the number of schools built in the last years.

affects other areas, namely the regime of the children's authorization to work after the conclusion of the obligatory education.

The efforts of the Mozambican State in extending the education are evident. However, this activity faces three problems, with the consequence of weak quality of education. In first place, the extension of education does not cover the needs of vacancies, because, between 2002 and 2006, more than 600 thousand children could not get vacancies in public schools. The second problem related to the attempt of extending education was the reduction of the number of hours of contact between the teacher and the student in the primary teaching with an average 4 hour a day. Finally, in the attempt to respond to the high demand of trained teachers, the Government decided to reduce the time of the teachers' training from two years to one. When students enter Teacher Training Institutions they come from a school that has quality deficiencies, so one year is not sufficient to overpass these. Besides, it does not allow introducing/strengthening other skills such as the rights and protection of children and community development knowledge so that they can integrate and be important resources in the communities where they are placed. To counterbalance this situation, the Government is improving the distance learning programmes for teachers, a programme that civil society would like to see highly prioritized.

The conjugation of these problems results in the weak quality of the teaching in the country, an issue of great concern to civil society. The empirical contact with students of the primary and secondary schools, even those that go up to the universities, shows a weak quality of the teaching in the lowest levels. Although this problem is recognized by the authorities, it is recommended that Government and civil society collaborate to jointly define efficient and effective strategies to reverse the situation.

Regarding vocational training and guidance, the Country counts with 74 professional Technical Schools and there are no public services of children's careers guidance, often pushing children to choose careers following their parents' suggestion, imitating their friends or following what s the available opportunities near their residence. But it must be noted that Government is currently (since 2007) implementing a programme to reorganize the technical and vocational education of the country showing that it has recognized its importance. It is recommended that the Government develops practical outputs from this programme soon, in order to qualify the national human resources to respond to the needs of development.

CHAPTER VIII- SPECIAL PROTECTION MEASURES

Children in situations of emergency

As for **Refugee Children** (Article 22), between 2002 and 2005, the refugees' population varied in Mozambique from about 7,200 (2002) to 5,969 (2005), having reached the pick in 2003 when the country had about 10,000 refugees.³⁵ According to data provided by the authorities, there some programs for taking care of the refugee child. Together with the Government, ACNUR attends already existent programs in education, culture and sport in refugee communities, improvement of the "curricula", supporting the construction of schools, kindergartens, and centres for youth, among others³⁶.

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³⁵ Refugee year's book 2005 www.unhcr.org/statistics/STATISTICS/4641be710.pdf

³⁶ Interview with NAR employee, Nampula

Regarding emergency situations, the country has been suffering frequent disasters, including simultaneous drought and flood crisis. The Government has improved its organization to respond effectively and protect the affected citizens and this has encouraged an improved coordination among the partners (international agencies, international and national NGOs) which on turn also improved the coordination between Government and its partners. The attention paid to the specific situation of children has been increasing (especially from 2006) and the Contingency Plans prioritize children issues and there are concrete measures established to ensure their protection. The support to these children in specific places where they can play and learn safely was a major achievement in the 2008 floods and there are signs of Government willingness to expand this experience. A more rapid response is expected in future cases, but the big effort to establish contingency plans at all levels and to capacitate the community risk reduction committees are the signs that ensure a positive involvement of the population at all levels.

Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39);

In Mozambique, there are no children soldiers since there is no war. But there are youngsters that were involved in the last 16 year-old war. Recent data indicate that the Government, pressed by the Forum of Demobilized Soldiers, is studying ways state to support the youths that were incorporated in the army when they were children.

Administration of the Juvenile Justice (article 40)

The recently published Law of the Organization of Minors Care creates the "minors' jurisdiction to guarantee the attendance to the younger ones in the domain of the criminal prevention, by the application of protection measures, assistance or education and in the domain of the defence of their rights or interests, by the adoption of appropriate civil providences³⁷."

However, up to now there is only one Juvenile Court in Mozambique, in the city of Maputo. In the remaining places, the children's subjects are dealt with by the common departments of the courts, creating serious difficulties to the jurisdictional protection of the child's rights, mainly due to the lack of the judges' specialization on child's rights, with the consequent weak quality of the judicial decisions and the delay of the legal procedures of processes involving juvenile issues.

The social assistance services on the courts are widely criticized in society, mostly due to the weak technical preparation that they reveal, leading to superficiality when informing the processes involving children, not considering the best interests of the child.

It is also noticed that the courts do not exercise the right of hearing the opinion of the children and in general the lawyers very rarely consider or register the child's opinion³⁸.

The child's economical exploitation including child labour (article 32)

Mozambique is a member of the conventions of ILO about the minimum age for the job and on the fight against the worst ways of child labour³⁹. As already mentioned above, the new Labour Law principles of these conventions. So, there is legal protection against the child's economical exploitation including the child labour.

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³⁷ Article 1, Tutelar Organization of Children.

³⁸ Processes were analysed at Juridic Assistance Office of Human Rights League and there was no any children's recorded idea at the court about their opinions.

³⁹ Convention 138 and 182, respectively

However, recent studies⁴⁰ and the observation of the reality reveal that there are difficulties of implementation of the legislation in this aspect. These studies, demonstrate that the child labour involves children between 7 and 17 years old that are exposed to work for more than 8 hours a day, for 7 days a week⁴¹; they indicate that the worse forms of child labour are the domestic work, the agriculture (family cash crops like cotton and tobacco), the fishing, the trade, the prostitution, the small scale mining, the manufacturing industry, the cleaning of vehicles and the forest industry.

The empiric data, still point the difficulty in controlling the child's economical exploitation in the informal sector, namely the child's involvement in the informal market (sale of products in the street, cleaning of graves in cemeteries, washing cars in cities, etc.), the child's involvement in begging practices (either begging or accompanying adults that beg in the street).

The intervention of the State to protect the children against these of abuses is practically inexistent. It is common opinion that the local State and autarkical agencies should have a clear legal mandate to prevent and repress the social and economical exploitation of the child. But this entitles a closer and systematic coordination and joint programmes between government/ autarkic authorities and civil society organizations.

Drugs abuse (article 33)

The Law no. 6/99 regulates the access of the children to night clubs and the consumption of the alcohol and of the tobacco However its implementation has not effectively controlled the access of children to this type of nocturnal public establishment. Interviews carried out with children between 16 and 18 years; reveal that at least 3 in each 10 have already been in a nocturne establishment and were not asked to show any identification document to prove their age⁴³. Direct observation shows that in places of high concentration of youths, there is a lot of alcohol consumption. This practice is followed by many car accidents with adolescents' deaths, especially at week ends and school holidays.

Recently, a local newspaper⁴⁴ revealed the vulnerabilities of the Country in relation to the drug traffic. This traffic, although mainly is addressed to foreigner countries, it is an open window for the youths' involvement in the drugs and if the State has little capacity of controlling the abuse of alcohol among younger, it will face great difficulties of controlling the consumption of drugs. The State has established an Institute to fight Drugs⁴⁵ but its visibility and activities are not noticeable. There are schools located right next to one of the largest markets that sell drinks in Maputo city. Little has been done to prevent and avoid similar situations that bring the risks of alcohol and drug consumption near to big concentrations of young people.

Sexual exploitation and sexual abuse and trafficking in persons (art. 34);

The sexual abuse of children is a complex phenomenon in the sense that in many cases they do not know or they do not notice that they are being abused sexually or they are before a subordination⁴⁶

⁴⁰ The summary of the studies is at the: ILO, International Secretary of Labor. The Impact of the children's work, particularly on its worse forms on school attending and performance in Mozambique.

41 Idem, apud Kulima, 1997, Loforte 1991, Barros & Tajú 1999, Eldring et al 200, MITRAB & UNICEF 2001

⁴³ Interviews conducted in Maputo, Nampula and Quelimane Cities

⁴⁴ Zambeze Newspaper

⁴⁵ Several newspapers that recently deal with the issues of traffic and drug comsuption were analysed. Curiously, none of them refered to this Institute.

⁴⁶ About sexual harassment at schools see: Maria José Arthur: Sexual Harassments in schools, www.wilsa.org.mz.

situation that impedes them of denouncing the situation⁴⁷. Recent data, pointed by independent studies reveal that between 8% and 18% of the girls suffered some form of sexual abuse and approximately 35%, were subject to sexual harassment involving verbal persuasion⁴⁸.

Since 2003 cases of suspected trafficking in persons (some involving children) have been talked of with little legal prosecution, mainly due to inefficiency of the investigation processes, that require specialized attention. The cases of traffic in people, particularly of children continue to be highlighted and in the last years grew in number and became more preoccupying⁴⁹. Large information and awareness raising campaigns are needed (civil society are coordinating with government authorities), especially considering the approach of 2010 and the World Football Championship in neighbour South Africa, affecting all neighbouring countries. In parallel clear signs of severe prosecution of traffickers are needed so the Government needs to improve its response capacity to this issue.

CHAPTER IX - DISSEMINATION OF DOCUMENTS RELATED TO CHILD RIGHTS

The dissemination of the documents related to child rights, varies according to the target group, being larger for the children than for adults. Consequently, the knowledge of child rights is larger among children (school manuals and teaching programs give privilege to the dissemination of the content of CRC in the schools).

However, the legislation protecting children is not adequately disseminated. The role of the State in the promotion of the human rights is not conducive to the dissemination of the legislation. There are no doubts that there are some activities carried out by the authorities and by the civil society, but the adoption of new strategies is advisable. In reality, it can be said there are no public programs⁵⁰ targeting adults.

Considering the existing actions to promote the rights among the children, it is advisable that they are more child friendly and practical, attracting the children's interest while capacitating them for their own protection, in practical terms.

CHAPTER X - RECOMMENDATIONS

The following recommendations are a brief summary of recommendations that have been mentioned along the report, so the main background for them is found along the above text.

Measures of implementation

It is recommended that the State checks that the adoption, interpretation and application of any law do not create a legal environment that, in practice, hinders any of the children's rights. For that, the evaluation of the impact of the laws has to include an item about the impact of the proposed laws on the implementation of the children's rights.

⁴⁹ Cfr.www.unicef.org/mozambique/pt/protection_3237.htm

⁴⁷ OIT, International Secretary. The impact of Children's work, particulary on its worst forms on school attending and perforance in Mozambique, pg 31.

⁸ Idem, *apud* Matavele, 2005:7.

The records of the TVM programs and of The Radio Mozambique were analysed, which are the biggest public channels. There are programs for children where time to time the children's rights are mentio. Having these programs for children, ther is a minus probability of being watched by their parents. Tthe content of Noticias Newspaper was also analysed. There was nothing related to spread of children's rights or other human rights.

General principles

The principles of no - discrimination, of the child's best interest, of the right to life, survival and development and the respect to the child's opinions constitute criteria of the activity should be incorporated in all activities that involve of affect children in any way. For this, it is recommended that the Government authorities with the mandate to protect children develop a pedagogic process to raise awareness of the employees, public agents, private sector and civil society.

It is also recommended, in parallel with the above, the establishment of appropriate administrative and certification systems to check/ certify the compliance of the basic principles stated on the CRC by employees and other public agents.

To ensure appropriate prevention and repression of the violation of the child's physical and moral integrity it is recommended the establishment of systems that lead to stronger coordination of the efforts among the competent authorities and between them and the civil society.

The Report also recommends the establishment of clear mechanisms to ensure systematic child participation, through their representative organisms, in the process of public decisions making.

Civil rights and freedoms

Regarding the **birth registration**, it is recommended: (i) the establishment of the regime of free registration (without time limits), and a faster and stronger effort on decentralization of the registration services, taking these services as near to the citizens as possible; (ii) to give priority to budget for the registration services.

In relation to the right of having **access to the appropriate information**, it is recommended that: (i) the State guarantees the existence of municipal and public schools libraries properly equipped with appropriate and suitable contents for each age group (paying special attention to children); (ii) the State strengthens its regulation capacity and control over the contents of media to avoid on non-appropriate information for children; (iii) the civil society strengthens its cooperation with the authorities against the consumption of informative contents not recommended for children.

Regarding the **freedom of association** it is recommended that the legal registration of child organizations led by children and the participation of children in the social bodies of the organizations they belong to (implying a review of the current legislation for registration of associations).

To ensure a wider knowledge about child rights it is recommended that the State authorities together with civil society and international agencies strengthen the dissemination of the documents related to child's rights, using languages, formats and methodologies that are the most adequate for each target group, aiming at a more effective and pedagogic impact of this activity.

Family environment and alternative care

It is recommended that the State authorities establishes systems to improve the coordination among all stakeholders (government, civil society and international agencies) working towards the improvement of child protection against abuses, in order to approve and implement adequate strategies to prevent the violation of the child's rights in their own families.

In the domain of the protection of **children with disabilities**, it is recommended: (i) the increase of the investment in public infrastructures, especially schools, to ensure the easy access of children with disabilities; (ii) the improvement of the training of teachers to deal with children with disabilities and their specific needs.

The report also suggests that the state authorities should introduce in the diplomatic activity the principle that it is a duty of every diplomatic institution to support and facilitate the reunification of children with their parents, when living in different countries.

The right to development

Regarding the **right to health** it is recommended: (i) stronger efforts to increase the number of paediatricians and other child specialized professionals; (ii) continuation of the effort to increase the number of health units in order to reduce the long distances walked by patients (including children).

Considering the low level of knowledge of **mother to child transmission of HIV** as well as the low coverage of the specialized assistance in the prenatal care it is recommended: (i) that the State increases its specialized assistance for the prevention of mother to child transmission of HIV, (programme on MTCP); (ii) that civil society has a stronger presence and action, in parallel and in coordination with the Government efforts, to improve and strengthen the civic education of communities regarding the prevention of intra-uterine transmission of HIV.

In what concerns the **social protection**, the State should increase the public resources allocated to the sector responsible for social activities, as well as improve the human and material capacity of the Ministry of Woman and Social Action.

In the domain of **the right to education**, it is recommended that a big effort is placed by Government to invest on the improvement of the quality of education. Expansion and more inclusiveness of the education should not be made at the expenses of the quality of the teaching. This implies a review of the whole educational system to find the major gaps and adequate strategies to cover them.

In the field of the Administration of the **Juvenile Justice**, it is recommended that the State authorities increase the investment in the functional specialization of the courts, with the creation of specialized departments/ staff for children, as well as with specialized training the judges on child friendly methodologies. In relation to legal procedures, there are necessary reforms to promote the procedural promptness of the processes of children.

Maputo, March 2009.

APPENDIXES

1. METHODOLOGY USED TO WRITE THE REPORT

The Convention of the Rights of the Child imposes to the Mozambican State the duty of taking all legislative, administrative, and financial or any other type of measures considered appropriate for the implementation of the convention. In this sense, this report considers as its basis, that children are rights bearers and the State is the main duty bearer to protection, promote and implement the children's rights. In this context, the civil society report about the situation of the implementation of the CRC in Mozambique is based on data that allows checking the situation of the protection, promotion and implementation of the children's rights by the State. For that, the report refers to information regarding the prevalent situation in the period between 2002 and 2006 (this was the period covered by the Government report) plus information up to 2008, as this will be more meaningful than outdated information so the recommendations are current and updated.

To ensure a wider participation of the civil society, Rede da Criança (national network of children's organizations) facilitated a whole process of wide consultation, meetings informed on the media, internet communication through its website, etc, thus involving xx organizations.

The first step was to analyze the Government's report but the access to it came late in the process.

A consultant was commissioned to collect information and coordinate the writing of the report which was commented by the group of involved organizations.

The data collection was based on literary review of previous studies that present data about the situation of the child's rights, preceded by to contacts and interviews, in the North, Centre and South regions of the country, concretely in the provinces of Nampula, Zambézia, Maputo and Maputo City. The choice of these areas was due to the fact that they represent places of larger population density, and, consequently, where great part of our target group is concentrated. The field work consisted, fundamentally, on data collection through interviews with individualities, institutions and with the children themselves, as well as empirical observation of some situations and group meetings with the civil society organizations that work in the area of the promotion and protection of the child's rights.

List of the Civil Society organizations involved the Process

- 1. Núcleo de Mavalane Contra Droga/SIDA
- 2. CESVITEM
- 3. Asscodecha
- 4. FAWEMO
- 5. ADECOMA
- 6. Centro de Reabilitação da Criança Igreja Anglicana -
- 7. Associação Horizonte Azul ASCHA
- 8. Associação Ahi Lhuleni Nala
- 9. Igreja Moria Apostólica
- 10. Associação Para o Desenvolvimento Integral da Criança APSC
- 11. Renascer OMAC
- 12. Associação Humanista Moçambicana
- 13. Centro Dia Mães de Mavalane
- 14. ADPP-Cidadela das Crianças
- 15. ASSODECO
- 16. Ministério Arco-íris
- 17. MULEIDE
- 18. Associação Xirilo Xa Kudumba
- 19. Associação Khandlelo
- 20. Associação Restaurar Esperança de Vida REVIDA
- 21. Ibís Moçambique
- 22. Terre Des Hommes Alemanha
- 23. Organização Ajuda Criança Desfavorecida OACD
- 24. Associação Ajuda Crescer AAC
- 25. Fundação Para o Desenvolvimento da Comunidade FDC
- 26. Kulima Ntwanano
- 27. Conselho Islâmico de Moçambique CISLAMO
- 28. AVIDRAMO
- 29. ACRIDEC
- 30. ARPA
- 31. Centro Comunitário Santo Estévão

- 32. MONASO
- 33. Visão Global Para Vida
- 34. Ndzuma
- 35. AMAC
- 36. Associação Khensani
- 37. ADDC
- 38. Colectivo Lhanguene
- 39. Organização Masana
- 40. Associação Dambo
- 41. Kubessa
- 42. Save the Children In Mozambique
- 43. World Vision
- 44. Associação Hlayiseka Ndleleni
- 45. Rede da CRIANÇA
- 46. AHAR
- 47. Organização Sonho Real
- 48. MOZ-Hope World Wide
- 49. HACI
- 50. TROCAIRE
- 51. Associação Para Promoção e Protecção dos Direitos da Criança APPDC
- 52. Rede CAME
- 53. Associação Kindlimuka
- 54. Sociedade Aberta
- 55. CCM Caran
- 56. FAMOD
- 57. Projecto Rua
- 58. ICDP
- 59. Crianças Jornalistas
- 60. Parlamento Infantil
- 61. Associação Ndyoko
- 62. ADEMO
- 63. ACUZA
- 64. Centro Juvenil Ingrid Chanwer
- 65. Solidariedade Zambézia Nampula

- 66. Liga dos Direitos da Criança LDC
- 67. Centro de Boa Esperança CVM

National Statistics - Source: World Bank (www.worldbank.org)

General	National	Urban	Rural
Population – National Institute for Statistics (INE) projection for 2004	19 million		
Children under age 18 (2004)	9,613,470		
% of population that live below poverty line (2003)	54%	52%	55%
% of population living in rural areas (2003)	70%		
Mortality			
Under five mortality rate (2003)	178	143	192
Infant mortality rate (2003)	124	95	135
Nutritional status			
Chronic malnutrition among children 0-5 years (stunting) (2003)	41%	29%	46%
Acute malnutrition among children 0-5 years (wasting) (2003)	4%	3.1%	4.3%
Children underweight between 0-5 years (2003)	23.7%	15.2%	27%
Water and Sanitation			
Access to safe drinking water (2003)	35.7%	58%	26%
Access to sanitation (2003)	44.8%		
HIV/AIDS			
HIV/AIDS Prevalence among 15- 49 years old (2002)	13.6%		
Projected HIV/AIDS Prevalence among 15 - 49 years old for 2004	14.9%		
Projected number of maternal orphans due to HIV/AIDS for 2004	227,830		
Immunization			
Children fully immunised (DPTHepB) by 12 months of age (2003)	43.5%		
Children 12-23 months fully immunised (2003)	63.3%	81%	56%
Children 12-23 months immunised against measles (2003)			
Education and Illiteracy			
Primary net enrolment rate (2003)	61%	76%	55%
Adult illiteracy rate (2003)	53.6%	36.7%	65.7%
Female illiteracy rate (2003)	68%	42%	81%
Maternity care and adolescent fertility			
Fertility Rate (2003)	5.5	4.4	6.1
Births attended by skilled health personnel (2003)	47.7%	80.7%	34.2%
Births in health institutions (2003)	49%	81%	34%
Communication			
Total % of population with radios	45.5%	55%	42%

PARPA II	CONVENTION	ODM	OBS
Goal of Development			
To reduce the rate of infant-juvenile mortality to 140 per 1000 alive born To reduce to 17% the predominance of low weight To reduce the ratio of the maternal mortality to 340 / 100 000 alive born 22% of the HIV-infected mothers receive prophylaxis to avoid the vertical transmission 30% of the eligible children for the therapy with anti-retroviral receive treatment Increase the covering of water supply 60% of the urban areas and 55 of the rural areas; sanitation 55% of covering in the urban area and 40 in the rural area	Article 24, n°1 of the Convention of the child's rights that determines that the child is entitled of enjoying of the best health and of disposing of services of cares of health, giving priority to the primary services of health and of prevention.	Goal 1: to eradicate the absolute poverty and the hunger Goal 4: to reduce the infant mortality Goal 5: to improve the maternal health Goal 6: to fight against HIV/AIDS, malaria and other diseases Goal 7: to guarantee the environmental sustainability	In relation to the infant-juvenile mortality, as well as the rate of maternal mortality, it is believed that in this area felt very important steps in the prosecution of the goals of the millennium. In the area of HIV/AIDS, it is still far to reach the ideal, because the existent services do not collect the real needs.
Goals in the education Increase the rate of conclusion of the primary education to 59 and 55 for the girl	Article 28 The right to education, with prominence to the compulsory nature and gratuitous of the primary education	Goal 2: Reach the universal primary education for all Goal 3: Promote the gender equality and attribute autonomy to women	With about 600 000 children out of the education system, it is still very far of providing the universal primary education for all
Goals in the domain of protection Improve the legal and institutional picture of the children's protection Develop and consolidate social safety's nets for the not privileged citizens, including orphan children Guarantee that the ratio of school frequency among maternal orphans is the same as the non-orphan children Guarantee that the malnutrition ratio among orphan children is the same of the non-orphans	Article 3, no. 2	Goal 6: fight against the HIV/AIDS, malaria and other diseases	With PARPA II's approval, there was a lot of evolution in the domain of the legislation of juvenile or with influence in the children. In relation to social safety's nets, they exist but they are insufficient, clearly, when compared with the drama of the child's vulnerability
Promote the youths' associative movement as strategy to organize	Article 12 The child's right to express his/her opinion freely and that it should be his opinion.	Goal 8: Develop a global partnership for the development	The legal picture is favourable to the association's activity. However, the demand of the majority for the registration of associations makes the children's organizations to be registered by adults