

## **Shadow report**

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# Stage of implementation of the CEDAW in Mozambique

**In reference to Government report:  
“First National Report on the Implementation of the  
Convention on the Elimination of All Forms of  
Discrimination against Women – CEDAW”, 2003**

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References

## **Organizations that participated in the writing and discussion of this report:**

- AMCS – Associação das Mulheres na Comunicação Social (Association of Women in the Media)
- AMMCJ – Associação Moçambicana de Mulheres de Carreira Jurídica (Mozambican Association of Women in Judicial Careers)
- AMRU – Associação da Mulher Rural (Association of Rural Women)
- ANSA – Associação de Nutrição e Segurança Alimentar (Association for Nutrition and Food Security)
- COMUTRA - Comité da Mulher Trabalhadora da Organização dos Trabalhadores Moçambicanos – Central Sindical (OTM-CS) (Committee of the Working Woman of the Organisation of Mozambican Workers – Labour Union)
- LDH - Liga Moçambicana dos Direitos Humanos (Human Rights League of Mozambique)
- MULEIDE – Mulher, Lei e Desenvolvimento (Association “Woman, Law and Development”)
- Rede CAME – Rede pela Defesa dos Direitos das Crianças (Network for the defence of the rights of the child)
- WLSA Mozambique – Women and Law in Southern Africa Research and Education Trust

## **List of abbreviations**

- INE – National Institute for Statistics
- MEC – Ministry of Education and Culture (with the new structure of the Government)
- MINAG – Ministry of Agriculture
- MINED - Ministry of Education (before 2004)
- MISAU – Ministry of Health
- MJD – Ministry of Youth and Sports
- UNFPA – United Nations Fund for Population Activities
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- EP1 – First cycle of primary education (grade 1 to 5)
- EP2 – Second cycle of primary education (grade 6 and 7)
- 
- CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
- ILO – International Labour Organisation
- INSS – National Institute for Social Security
- UNDP – United Nations Development Programme
- WLSA - Women and Law in Southern Africa

## Preface

Our decision to participate in the writing and discussion of this shadow report is motivated by our wish to contribute to a multifaceted analysis of the exercise of women's human rights in Mozambique from a civil society standpoint, thus trying to bring other perspectives and women's interests into the discussion, within the framework of the relationship we maintain with the Government. As civil society organisations our relationship with the Government has, indeed, been characterized by complementarity on the one hand and criticism on the other, keeping always in mind that what guides us is our wish to respect, to ensure and to create the conditions for the exercise of women's civil rights.

We would also like to mention that it is with immense satisfaction that we see the initiative of the Government to submit, for the first time, a report about its performance with regard to the CEDAW. This is one of these moments in which it is essential to stop and reflect, to reorient ourselves, to correct or to strengthen strategies already put into practice. We hope this report will serve as a basis for a fruitful discussion.

## Introduction

The report you have before you is meant to present an alternative look at the first report by the Government of Mozambique about its observance of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by the Assembly of the Republic (Parliament), through its resolution 4/1993 (Government Gazette, 1<sup>st</sup> series, n° 22, of 2 June 1993).

The situation of women's human rights in Mozambique is characterized by an official discourse and Government strategy that shows concern with equality in social gender relations in all areas. In fact, the present Government Programme (2004-2009) presents a consistent gender perspective, marking a noticeable difference with earlier Programmes. The Government Programme and all sector plans explicitly state the wish to re-establish gender balance and most of them have a practical expression, in the form of activities meant to improve the situation of women.

However, this open discourse in favour of gender equality conceals the lack of equality that exists at various levels. First of all, we have to ask ourselves what is the implicit concept of gender equality. In other words, it is not enough to acknowledge the existence of inequality between women and men, we need to go further and identify the causes of this inequality, acknowledging the existence of patriarchal structures and values that ensure and at the same time legitimise the subordination of women.

Secondly, without a concrete and realistic diagnosis of the social dynamics that produce and reproduce gender inequality, the programmes and activities provided for in the governmental plans will hardly be able to lead to lasting changes. For example, in the education sector, as we will see later on, the measures that are proposed to increase access and retention of women in schools do not address the social structures that call forth the constraints that limit participation by girls. In other words, although there is some action in the present and some results are obtained, at least numerically, the patriarchal structures are not challenged and the

struggle is not about a change of attitude that, in the medium and long run, will remove the obstacles to the presence of girls in school. Summarising we can state that the model of domination is not contested, and therefore the interventions act only at an immediate and superficial level.

This refusal to go beyond, to be more direct in its criticism and in its struggle against the structures that sustain the domination of women, almost always finds its justification in cultural arguments. Presenting them as “respect for tradition” or as “cultural rights”, they have served as an excuse not to interfere more profoundly and have restrained attempts to change the situation, an issue that will be further addressed in the discussion of Article 5.

It seems we are faced with a paradox made up of incongruity between what is said and what is done. In fact, we could try to propose another approach that restores meaning to the general pattern of action of the Government: the official discourse favouring gender equality, the consentaneous legal reforms and the superficial intervention programmes in favour of women serve as a cover and as a restraint on questioning the foundations of discrimination and the models of domination. In other words, while the country seems aligned with the United Nations system of human rights and coherent with its own principles as expressed in the Constitution, it never really questions the structures of domination over women. The image of a country firmly treading the path of democracy is safeguarded, while gender inequalities continue to exist and are concealed under a discourse openly in favour of equality.

As for the Government report that is the object of this alternative report, we would like to acknowledge that it constitutes a serious attempt to assess the process of implementing the CEDAW, although we have to point out a weakness, which is the fact that it presents information that is already outdated, thus showing serious gaps and leaving out some important developments. E.g., the new Family Law has already been approved, which is a direct response to one of the recommendations of the CEDAW.

With this shadow report we want to go a little deeper. Although we present some of the missing data and update some other information (only the most relevant) we want to introduce an analytical perspective that explains the limits of the advances concerning the human rights of women, trying to look beyond the official discourse and lay bare the conceptions that are implicit in the policies and programmes in favour of gender equality.

The issue of women’s access to human rights in Mozambique is analysed in this report in terms of each one of the components that constitute CEDAW, taking into account the holistic character of human rights: the absence of rights in a determined area impedes or hinders the exercise of these rights in other areas. It is also noted that even when rights are protected by law, if there are no instruments for their application these become innocuous and ineffective.

In short:

- Even if the Land Law allows for women to hold land titles, the deficient public exposure given to the law and the maintenance of associative structures, accentuate women’s dependence at a community level, even in women who directly work the land (Osório & Mejia, 2006).
- Even if girl’s access to schooling is constitutionally guaranteed (and efforts have been made by the government and civil society organizations to make this effective), the non-condemnation of sexual harassment and the condemnation of teenage pregnancy by sending pregnant girls to night school results in girls dropping out of school, reinforcing

the normalization of gender inequality, failing to create a suitable environment for the mobilization against discrimination (Osório & Silva, 2007).

In the first part of this report we present some data that are relevant for the social, economic and historical situation of the country. In the second part we present a discussion of the critical aspects with regard to the implementation of the CEDAW.

## I – The national context in Mozambique

### **1. General context: the political system and civil society**

Mozambique acquired its independence in 1975, after a prolonged national liberation struggle. Until 1990 the country was governed by a regime of Marxist-Leninist orientation that established a one party system. Shortly after independence a war of aggression started, directed by the racist regimes of Rhodesia and South Africa, that later gained internal dynamics, fed by social discontent at the base, and transformed itself into a civil war that caused enormous human and material losses, creating individual and collective wounds and traumas that will probably take generations to heal and to overcome.

With the Constitution of 1990 a multi-party system is established, two years later a peace agreement is reached and in 1994 the first multi-party elections, presidential and legislative, are held. The present Government is the outcome of the third multiparty elections and the winning party, the same that has governed the country since independence, has an absolute majority in Parliament.

With the change in political orientation in 1990, the legalisation of economical and political associations and the newly introduced Press Law brought freedom of association, of speech and of political intervention that are exercised in a climate of civil peace, that has contributed to the deepening of the democratic system. It was in this context and seizing the opportunities created by the system that civil women's organisations emerged, aspiring to fight for the human rights of women, making sure that their voices and their needs are heard permanently and at national level.

The main concern, in the name of the defence of human rights, has been to create conditions and to encourage that several voices, in particular the most marginalized, can make themselves heard and demand greater inclusion. The State must not only guarantee the coexistence of different expressions of thought, but also the possibility of social control of the fundamental freedoms, as guaranteed by law in conformity with the democratic system, which can be problematic when the party that won the last elections concentrates so much power (with an absolute majority in Parliament since the first elections in 1994 and before that in a one-party regime). Particularly since 2004 a tendency to has been felt to subordinate the State to the party and several signals in this direction have been recorded, e.g. the campaign – during working hours – to recruit members for the ruling party in Government departments, an opportunity not offered to the other parties that form the opposition; meetings to regenerate the party cells of the ruling party, in State institutions, also during working hours; the party instruction for civil servants to study with regularity in the workplace the speeches of the

President of the Republic and party president; promotions based on the virtue of a party career.<sup>1</sup>

Another aspect that could become problematic is a certain trend on the part of the donor community to canalize the funding for civil society organisations through the State organism of tutelage. This forces the organisations to depend on the Government to obtain funding for their operation, hindering the free exercise of their critical function.

When considering all this, it seems important to us to guarantee the possibility of the existence of critical voices, representing several interests, so that the institutions are structured around democratic values and open themselves more and more to the principle of control by the citizens (women and men) as one way of exercising their citizenship rights.

## **2. Mozambique and national and international law as concerns women's human rights**

The situation of the human rights of women in Mozambique must be seen from different angles. First of all, the first Government formed after national independence in 1975 and the first Constitution of the Republic, drawn up in the same year, instituted an official position in favour of and promoting the “emancipation of women”. When recognizing explicitly the equality of all citizens, men and women, and also specifically that “men and women shall be equal before the law in all spheres of political, economic, social and cultural life” (article 67 of the Constitution of 1975), it was decreed that only the legislation that was not in contradiction with these provisions would be retained, although many laws that are still in force until today contain in fact provisions that discriminate against women<sup>2</sup>.

Secondly, we have to consider the limits of the policy of the “emancipation of women” to understand the constraints on the exercise of women's human rights. What was decisive in this approach was the influence of the social theory about women that was defended by the party that led the struggle against colonial occupation and that has been in power since independence. By considering that “emancipation can only take place within the framework of a wider revolution, that the road to liberation passes through the integration into the labour force and that the laws of the country, guaranteeing equality, suppressed the domination of women”, the “understanding of the complexity of the mechanisms of gender domination” was in fact partly hindered (Arthur, 1999).

In the third place, the liberalisation of the economy, the bankruptcy of the social policies of the State and the introduction of a multi-party system, with the first legislative and presidential elections held in 1994, influenced the way citizens have access to rights and how those rights are protected by the State. As mentioned before, new social actors emerged, like the civil associations of women, seeking to warrant the human rights of women, that are more

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<sup>1</sup> As far as the civil society associations that struggle for the human rights of women are concerned, some worrying signals have occurred. E.g., when the activists of one association participated in a public rally, it was suggested that they change their T-shirts with the name of the organisation on it for others, bearing the name of the women's organisation of the ruling party, in order “not to annoy the Minister”; another organisation, that is active in the area of HIV/AIDS, before meeting the President, was warned not to “talk badly”, in other words, not to expound the problems they are having, to avoid giving a negative image of the country. Still another example happened in one of the provinces, when during a course for women, organised by a human rights association, the wife of the highest local leader went there to expel the participants that were members of the main opposition party.

<sup>2</sup> This is the case with the Penal Code and the Succession and Inheritance Law that are presently being revised.

and more present in public life and that are important to influence Government policies and programmes.

Considering these aspect, it has to be conceded that the Governments of Mozambique have been coherent in their official position of recognizing equality between women and men and the principle of non-discrimination has been present since the first (1975) until the third Constitution (2004). On the other hand, the main legal instruments of the international system of human rights have been approved and ratified by Parliament.

## II. An alternative analysis of the implementation of the CEDAW in Mozambique

### **The implementation of the CEDAW in the juridical order of Mozambique**

As we saw, the CEDAW was ratified by the Assembly of the Republic (Parliament) through its resolution 4/93 of 2 June 1993, based on its competencies as laid down in paragraph k of section 2 of article 135 of the Constitution that was in force at the time (the Constitution of the Republic of 1990). We must not forget to mention that the Protocol to the Convention has not been signed yet.

In parallel with the CEDAW, the Protocol to the African Charter of Human and People's Rights on the Rights of Women in Africa, which was ratified by Parliament in December 2005, is also relevant in the juridical order in Mozambique. The importance of this legal instrument rests in the fact that it goes beyond the African Charter, showing the gender inequalities and the difficulties and injustices to which women are subject: "In doing so, the Protocol explicitly acknowledges what the African Charter does not: that women's rights as human rights must be respected and observed" (Delpont, 2004).

In this respect, article 23 of the CEDAW recalls that:

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Accordingly, we propose the Protocol on the Human Rights of Women in Africa is operationalised, to be able to include in the legislation matters referring to sexual and reproductive rights of women, particularly the right of interruption of unwanted pregnancies. According to the Constitution of the Republic, international legislation, when ratified, becomes part of the juridical order of the country<sup>3</sup>, but it is still necessary to define its relation with the national laws.

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<sup>3</sup> Article 18, on International Law: "1. Validly approved and ratified International treaties and agreements shall enter into force in the Mozambican legal order once they have been officially published and while they are internationally binding on the Mozambican State. 2. Norms of international law shall have the same force in the Mozambican legal order as have infra-constitutional legislative acts of the Assembly of the Republic and the Government, according to the respective manner in which they are received. "

The CEDAW imposes conventional principles that compel State parties to acknowledge, ensure and promote the Rights that are enshrined in the Convention, notably in Article 2 that establishes that the principle of equality of rights between men and women should be embodied in the legislation of the country and that the practical realisation of this principle should be ensured, through law or other adequate means. It is on the basis of this provision that we will now proceed to an appraisal of the Constitution of the Republic.

When the Convention was ratified, the second Constitution after National Independence, adopted in 1990, was in force in Mozambique. In response to the demands of a democratic system, in 2004 a new Constitution was approved, that extends the Basic Rights, the guarantees and the individual liberties. Establishing a parallel with the CEDAW, we can state the following:

CEDAW	CONSTITUTION
<p><b>Article 2 (a)</b> - (...) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle</p>	<p><b>Article 35</b> – All citizens are equal before the law, and they shall enjoy the same rights and be subject to the same duties, regardless of colour, race, sex, ethnic origin, place of birth, religion, level of education, social position, the marital status of their parents, their profession or their political preference.</p> <p><b>Article 36</b> – Men and women shall be equal before the law in all spheres of political, economic, social and cultural life.</p> <p><b>Article 62, 1</b> - The State shall guarantee that citizens have access to the courts and that persons charged with a crime have the right to defence and the right to legal assistance and aid.</p> <p><b>Article 70</b> - Every citizen shall have the right of recourse to the courts against acts that violate their rights and interests recognised by the Constitution and the laws.</p>
<p><b>Article 5 (a)</b> - States Parties shall take all appropriate measures [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (...)</p>	<p><b>Article 39</b> - All acts intended to undermine national unity, to disturb social harmony or to create divisions or situations of privilege or discrimination based on colour, race, sex, ethnic origin, place of birth, religion, level of education, social position, physical or mental ability, the marital status of one’s parents, profession or political preference, shall be punished in terms of the law.</p> <p><b>Article 40</b> - All citizens shall have the right to life and to physical and moral integrity, and they shall not be subjected to torture or to cruel or inhuman treatment.</p>

<p><b>Article 7</b> - States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:</p> <ul style="list-style-type: none"> <li>a. To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;</li> <li>b. To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government (...)</li> </ul>	<p><b>Article 73</b> - The Mozambican people shall exercise political power through elections of their representatives by universal, direct, equal and periodic suffrage and by secret ballot, through referenda on major national issues, and through the permanent democratic participation of citizens in the affairs of the nation.</p> <p><b>Article 52, 1</b> - All citizens shall enjoy freedom of association.</p> <p><b>Article 53, 1</b> - All citizens shall have the freedom to form or to participate in political parties.</p>
<p><b>Article 9, 1</b> - States Parties shall grant women equal rights with men to acquire, change or retain their nationality. (...)</p>	<p><b>Article 26</b> - A foreign person who has been married to a Mozambican citizen for at least five years acquires Mozambican nationality, except in cases of statelessness, provided that all of the following conditions are met:</p> <ul style="list-style-type: none"> <li>a. that he or she declares that he or she wishes to acquire Mozambican nationality;</li> <li>b. that he or she meets the requirements and offers the guarantees prescribed by law.</li> </ul> <p><b>Article 32, 2</b> - A Mozambican woman who has lost her nationality through marriage may reacquire it by addressing a request to the competent authorities.</p>
<p><b>Article 15, 4</b> - States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.</p>	<p><b>Article 55</b> - All citizens shall have the right to take up residence in any part of the national territory.</p>

These are the most important constitutional provisions in defence of the equality of women and men that correspond directly to the CEDAW. But the 2004 Constitution has extended the whole of basic rights and guarantees and contains other clauses that also contribute to the defence of Human Rights, particularly the right to information, to access to the courts, to legal aid and to a just trial. It also recognizes the right of *habeas corpus*, among others.

It should be said, on the other hand, that our Fundamental Law, since its first version (in 1975), stipulates that all prior legislation that is not in contradiction with the Constitution is maintained in force, while all legislation that contradicts the principle of equality of rights between women and men is revoked. However, practice has shown that this revocation is not automatic, thus giving room to situations of violation of Human Rights and consequently of violation of this principle, as in the following cases:

- Commercial Law – Until 2005, when the revision of this law was approved, the Commercial Law in force in Mozambique dated from 1888 and in some of its provisions contradicted the principle of gender equality. Today, with the new law in force, women are allowed to exercise any commercial activity, on a par with men.
- Family Law – Before the approval of the new law in 2004, the legislation that ruled family matters was part of the Civil Code of 1967, which contained some flagrant discrimination against women. According to this Civil Code, a woman reached her full legal capacity at age 21, being considered as able to govern herself and to make use of her possessions, but the situation was different for married women. The new law corresponds to the spirit of the CEDAW (see table below).
- Penal Code – Still in force, dating from 1886, although it underwent some superficial revisions, discriminates against women, not only in the letter of the law, but also in its values and prejudices. It is presently being revised (see below).

Two very important laws are presently under revision, the Penal Code and the Succession and Inheritance Law:

- Penal Code – The revision of this law is urgent and it is expected to be brought in agreement with the CEDAW and other international conventions and legal instruments that were ratified by the Government, particularly with regard to the classification as a crime of rape within marriage, of sexual harassment (until now considered a crime only within the framework of the Labour Law, in the context of employment), and of incest. Human trafficking should also be classified as a crime and its internal dimension should be acknowledged, in accordance with the international legal definition. In the context of the Code, abortion should be decriminalised and domestic violence against women acknowledged and classified as a public crime. On the other hand, we expect to see eliminated from the law those concepts that can be considered as sexist and discriminatory against women and that are related to religious and moralist standpoints.
- Succession and Inheritance Law – One of the major problems in this context is related to those who are entitled to inherit, among whom the spouse occupies only the fourth place. Organisations that defend women's human rights are of the opinion that, even in the case of marriage under a regime of community property, where the spouse owns half the property, the spouse should be first or second among the heirs, particularly now that the AIDS epidemic has led to an alarming increase in the mortality rate. The inclusion of the child living within a family<sup>4</sup> in the group of heirs is another question that has led to much debate. On the other hand, in the Family Law we find many new figures that require an immediate revision of the Succession Law. The most important one is without a doubt the *de facto* union, because the survivor must have the right to inherit. In the case of a *de facto* union or cohabitation the only thing foreseen, mentioned in article 424 of the Family Law, is the right of the survivor to be fed by the revenue generated by the goods left by the defunct, but there is no provision about the passing of the property of those goods to the survivor.

At the same time, two civil society initiatives are taking place, to propose laws to parliament:

- A proposed law against domestic violence, taking into consideration that the main victims are women – A group of organisations that defend women's human rights launched the initiative to write a proposal for a law that seeks to act on different levels: criminalize the aggressor, protect the victims and lend them multi-sector assistance, educate for peace and to diminish the social legitimacy of this kind of violence.

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<sup>4</sup> This is the case of a large number of children taken by "reception families", without adoption, because of the civil war or because they are AIDS orphans.

- A proposed law against human trafficking, taking into consideration that the main victims are women and children – Organisations for the defence of the rights of the child took this initiative, driven by the urgency to classify a crime that has been growing in dimension and that has an internal (from the country to the city, labour and sexual exploration being concealed as a form of family solidarity) as well as an international character (having Mozambique as starting-point).

It has to be noted that at the level of public opinion, constructed around the debate in the media, mostly dominated by patriarchal interests, a campaign has been launched against the inclusion of a perspective of equality, particularly in two *dossiers*: the Penal Code and the proposed law against domestic violence. The attacks do not dare to be frontal, i.e. the patriarchal system is never defended openly; what happens is that the demands of the organisations that defend women’s human rights are depicted as “radical”, “discriminating against men” or as an assault on Mozambican or African culture. The activists themselves, on the other hand, are disqualified by accusing them of being “feminists” or “radicals”.<sup>5</sup>

### **Recommendations**

- Government must propose to Parliament the immediate domestication of the Protocol to the African Charter of Human and People’s Rights on the Rights of Women in Africa, which was written in the same spirit, but goes beyond the CEDAW, by defining ways of operationalising the Convention.
- Government must ensure that the principle of non-discrimination against women is guaranteed in the revision of the Penal Code and of the Succession and Inheritance Law, not only by elimination of those provisions that discriminate openly, but by eliminating all prejudices and sexist values that are implicit in these Laws.
- In addition, Government must ensure that the Succession and Inheritance Law is drawn up in agreement with the contents of the Family Law, particularly in respect to the *de facto* union, to the “reception family”<sup>6</sup> and to the rights that refer to a state of polygamy.
- The approval of the law against domestic violence that is being proposed by civil society is important, in order to fill in the legal gaps in the struggle against one of the problems that is most detrimental to the exercise of the human rights of women, guaranteeing that domestic violence against women is classified as a public crime.
- Government must activate the process of discussion and approval of the draft law against the trafficking of women and children.
- In all these processes of revision of laws it should be acknowledged that women and men are in unequal positions and that, in some cases, the law must define exceptional measures (as provided in article 4 of the CEDAW and particularly the requirements of Resolution 25 of the same Convention) to correct these inequalities.
- Government must invest more in public education for gender equality, resorting to the public media and establishing ethical standards for all media, public and private, to ensure that the values and principles of non discrimination inscribed in the Constitution are respected. Interventions by the Government in this sense must be unambiguous and the defence of citizenship rights of women and men should not be made dependent on electoral interests.

<sup>5</sup> In this respect, cf. the opinion article by Mini Macatai Mathendja, published in the weekly “Domingo” of 21 May 2006; a reply was published in the same weekly and signed by the President of the Board of *Fórum Mulher*.

<sup>6</sup> See footnote nº 8.

- Still related to the same subject and to complete the country's accession to the CEDAW, Government should sign and Parliament should ratify the Protocol to this Convention.

#### **Article 4**

#### **Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women (consolidated by Resolution 25)**

The report by the Government acknowledges that, although forbidden by national law, in practice women are still being discriminated. However, no exceptional measures were taken to address this imbalance. In other words, the country did not include in its legislation any temporary special measures, thus limiting the implementation of positive (affirmative) action in the fields of education, health care, employment and above all the carrying out of policies that tend to particularly favour the exercise of sexual and reproductive rights, such as the enjoyment by women of a life without violence. On the contrary, a civil society initiative to propose a law against domestic violence (see above), that is based on the need to use “temporary special measures” recommended in this article of the CEDAW, have been the object of repeated attacks because it is considered to be stimulating the discrimination of men by women.<sup>7</sup>

We should recall here that Mozambique has a high percentage of women occupying leading positions in Parliament and in the Government<sup>8</sup>, a situation that is due to the following factors:

- The statutes of the two major parties, Frelimo and Renamo, stipulate a target of 30% for the participation of women, which has been respected and sometimes even exceeded in the list of candidates and in the composition of the two benches in Parliament;
- When constituting Government, the ruling party, Frelimo, guaranteed that it would apply its quota policy.

This aspect is important, but as long as there is no law that guarantees minimum quotas, this situation can revert at any moment. Should commitments and intentions of leaders at different levels change, there is nothing that forces them to maintain the present percentage of women in leadership positions. For this reason one of the conclusions drawn in a seminar with civil society women's organisations, promoted by the *Gabinete da Mulher Parlamentar* (a loose association of female Members of Parliament), in July 2006, was that special legislation on the positive action of a quota system, to be monitored by civil society, should be drawn up. Unfortunately, nothing concrete has been done since then.

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<sup>7</sup> The latest example is the comment “*Violência doméstica: proposta de lei está desajustada*” (Domestic violence: proposed law is maladjusted) by Lázaro Mabunda, published in the weekly *O País* on 2 February 2007. See also the article signed by Mini Macatai Mathendja, of 21 May 2006, in the weekly *Domingo*.

<sup>8</sup> In Parliament 35% of the Members are women (INE, 2005); without underestimating the importance of these numbers, it should be pointed out that the presence of big numbers of women in leadership positions, particularly in Parliament, conceals a lack of power of the female Members and the absence of a gender agenda (Osório, 2005).

## **Recommendations**

- A national law should be drawn up that defines quotas that stipulate a minimum of 30% for the participation of women at all levels.
- Exceptional measures to correct gender inequality should be provided by law and/or public policies, in the fields of violence against women, health care, education and employment.

## **Article 5**

### **On the role of gender, custom and stereotypes**

The Government's report on the issues covered by article 5 starts with a detailed account that identifies some of the cultural traditional practices that have contributed to maintaining women in subordinate roles and positions. These are initiation rites, *lobolo* (bridal compensation), early marriage and polygamy. This acknowledgement, however modest, represents the most straightforward official recognition of the problem in recent years, where the ruling party's approach has been characterized by great care in not contradicting conservative sectors that demand a defense of tradition, especially in respect to women's human rights, as will be discussed later.

Unfortunately the rest of the report does not analyze public policy on the subject with the same detail, and is limited to the identification of some general and vague measures, without pointing out direct responsibilities of institutions making results difficult to measure and evaluate. Examples of this are the treatment of the "promotion of the rights of women" and the "promotion of equal opportunities".

In relation to this we would like to stress two points:

- First, change in terms of gender roles and the enjoyment of citizen rights by women will only be possible through concerted actions involving all sectors aimed at impairing the patriarchal structures of society, with visible results in a medium to long run. The lack of an approach of "intervention to bring about change" is constantly condemned throughout this alternative report.
- Second, as stated in the introduction, many proposals for change at a legal or public policy level are dismissed in an atmosphere of hostility, under the argument that they go against cultural practices. This hostility does not appear as an official position, but is openly assumed by public servants in various State institutions, extending the debate into the mass media. As a result, certain sectors of society present equality between women and men as an evil that could ruin national and African culture and destroy social cohesion. These positions are manifested publicly in the media, without any intervention from the Government, even if those intents deliberately violate principles and rights that are guaranteed by the Constitution.<sup>9</sup>

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<sup>9</sup> This situation is very well described by Salman Rushdie: "Culture [is used] as a shield, but also as a sword" ("*Marcar pontos, culturalmente falando*", "Livros", supl. Independente, July/August 2000).

The process that led up to the new Family Law (1998-2004) and the revision of the Penal Code (ongoing) illustrates this second point, where the demands that are related to women's human rights, particularly those that seek to eliminate or to undermine the foundations of power, are contested with the argument that they are in contradiction with local/national/regional cultural values.

What remains "in the air" is the idea that the "bad" traditions have to be combated, while the "good" traditions should be promoted. However, the institutions of Government and its leaders are visibly reluctant to define their position in relation to those traditions that severely limit the exercise of citizenship rights by women. For example, when some sectors of society defended the recognition of polygamy within the Family Law, although this explicitly contradicts the principle of equality enshrined in the Constitution, there was no official intervention whatsoever in the public debate about the question. It was left to the women's organisations that were involved in the process to find resources and publish communiqués to explain why polygamy is an assault on women's human rights<sup>10</sup>.

In the same line of reasoning, we have to mention that State institutions rarely or never intervene in the public debate, through the media, even if the ideas that are defended offend the most basic human rights, like the right of dignity, of physical integrity and control of one's own body. We have to cite here a recent article, titled "They shoot peoples, don't they?" by L.S. Kudjeka, pushed in three parts in the weekly *Zambeze*, on 2, 9 and 16 November 2006. In this text, the author explains that one of the best ways to dominate the African peoples is by "destroying the fabric of society", which would be done by promoting women's rights. At the same time he defends:

1. The *levirate*, the practice that establishes that a widow should marry her brother-in-law, so as to stay in her husband's family; the author defends that the levirate ensures the rights and dignity of a woman and her children, and that therefore they don't have to inherit from the defunct, because they do not lose anything by widowhood.
2. Polygamy, presented as a "socio-economic form of organisation that aims to increase family production" and that allows to improve the nourishment of the family, the health and nutrition of the children, freeing time for them to be able to go to school.
3. Child marriage, although recognizing that it has "harmful" aspects, is considered a benefit, as a way of freeing the girl from sexual harassment by all men, by becoming "subject" (the term used by the author) to only one man; instead of working for her parents and brothers she gets to work only for the husband, she gets somebody that takes on the responsibility for her sustenance and safety and, finally, it reduces the spread of HIV/AIDS.

This article is a real assault on the rights and on the dignity of the country's women and falls directly into the category of "discrimination" on the basis of sex, since it openly defends practices that damage the rights and even the physical integrity of women and girls, as e.g. child marriage<sup>11</sup>. The author forgets or ignores the international commitments that the Mozambican State took upon itself, particularly by ratifying the Convention of the Rights of the Child, which states that every human being below the age of 18 years is considered a

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<sup>10</sup> Cf. Communiqués about the Family Law published in 2003 in the "Notícias" daily newspaper and signed by *Forum Mulher* and WLSA Mozambique. These were answered in the "Outras Vozes" bulletin, Number 3 of that same year.

<sup>11</sup> As a matter of fact, Mozambique is on the list of countries in which the situation in relation to this question is worst (Population Council, 2004, *Child Marriage Briefing: Mozambique*, New York). This aspect is further developed in article 16.

child, irrespective of its sex. How is it possible that theses that openly advocate the inferiority of women and the need of their ongoing subordination are published in a democracy and in a Constitutional State?

The reason for the official reluctance to intervene in situations as serious as this one can only be seen as part of a political strategy to capture and retain voters, possibly inspired by fear of losing or dissuading those sectors that more and more openly position themselves against any changes in favour of gender equality.

#### **Recommendations:**

- It is imperative that the Government regains a leading role (as it did in the years following independence in 1975) in awareness campaigns against cultural and traditional practices that discriminate against girls and women, working at the grassroots level and intervening in public debate.
- The Government must develop educational programs for schools and youth organizations to teach new values of equality and citizenship. This recommendation refers to a central action to comply with CEDAW and therefore it will be reiterated in other recommendations dealing with specific articles.
- The established structures of the legal system must criminalize cultural practices that gravely attack the rights of girls, especially child weddings, using existing laws, (eventhough these still present legal voids).

#### **Article 10**

##### **On equal rights in the field of education**

This article deals with the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods.

The Government Report on the CEDAW, written in 2002-2003, is outdated in relation to what is happening in the educational sector in Mozambique, at least with regard to statistical data. The Government and its Cooperation partners have invested substantially in this sector during the last years as far as financial resources are concerned, in agreement with the commitments of the World Conference on Education for All in Jomtien (1990), the World Education Forum in Dakar (2000) and the Education for All Fast Track Initiative (FTI).

Some examples of outdated information are the following:

- Repetition rates. The introduction of a new curriculum and a system of semi-automatic transition lead to a significant change in the situation in the first cycle of primary education (EP1),<sup>12</sup> where the majority of the school population (82% in 2006), including girls, is concentrated. Data provided by the Ministry of Education (July 2006) show that

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<sup>12</sup> Primary education in Mozambique is divided in two cycles: the first cycle, called EP1, comprises grades 1 to 5, the second cycle, EP2, consists of grades 6 and 7.

the repetition rate is 5,3% in the first cycle of primary education (EP1)<sup>13</sup>, as opposed to the 25% mentioned in the Government report (referring to the period from 1987 to 1999). These are, of course, only numerical data. The question of quality remains of concern. Observations made by several NGOs in different parts of the country point out that many children who reach grade 5 are hardly able to write, read, do basic arithmetic and solve problems. There are still no indications that adequate measures are being taken to turn around this situation. The question of quality in education is related to the training of teachers and of their trainers, which is still extremely weak; this has to do with the planning and management of schools and the educational system as such.

- Net enrolment rate<sup>14</sup> in the first cycle of primary education in 2006 was 88.3% for the country as a whole, being 86.3% for girls, which represent a substantial improvement in comparison with the last years.
- Drop-out rates in the first cycle of primary education. The governmental report only mentions the problem of drop-outs in passing. Although the rates have decreased between 1992 and 2006, they are still dealt with by the education sector in such a way that it is impossible to know if they reflect definitive drop-out or only a temporary interruption. The rate in itself does not reveal the causes of drop-out, particularly in the case of girls, making it impossible for the Ministry of Education or other interested people to know what are the real reasons that make girls decide to leave school, which, in turn, makes it harder to develop strategies to improve the situation. Managers, teachers and specialists at all levels just keep repeating that child marriage and unwanted and/or early pregnancies form the real reason, thus putting the factors that are external to the system in the first place. However, it is widely known that illegal payment demands, sexual harassment and abuse, the lack of even the most basic sanitary conditions in some schools, the lack of security in boarding schools, the impunity of teachers and managers with corrupt and promiscuous practices, among others, continue to be important reasons for many girls to leave school, or for parents to withdraw them before finishing primary education.

Recent data show that the national drop-out rate in the first and second cycle of primary education were about 7.9% and 8.4%, respectively in 2005.<sup>15</sup>

There are very few recent studies about the education of girls and very little is known e.g. about the impact of HIV/AIDS in the life of those girls that fail, repeat or are forced to leave school, at the different levels of education, to take care of family or personal priorities, caused by the infection or by the disease. Little, if any, of all this is mentioned in the Government report.

What is not mentioned either is that the Ministry of Education and Culture nowadays has a Strategic Plan for Education and Culture for 2006-11, approved in 2006, in which the questions of gender and the fight against HIV/AIDS are considered. Each of these areas has its own strategy. The one for gender has been in “draft” stage for several years now and its updating and approval do not seem to be among the priorities on the agenda of the education sector. Apparently, everybody was waiting for approval of a national policy on gender, but that happened already in 2006. As for HIV/AIDS, the policy and the communication and intervention strategies have been improved. However, the management of its implementation, including its monitoring and evaluation, are still in such a state that there are serious doubts

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<sup>13</sup> Although in grade 2 and 5 the rates are 8.6% and 7.0%, respectively.

<sup>14</sup> Number of pupils attending EP1, expressed as a percentage of the total population in the age-group that should attend this level of education (6 to 10 years).

<sup>15</sup> Ministry of Education, July 2006.

about its effectiveness and efficiency. There are certain initiatives that, if well implemented, can contribute to the improvement of management of schools in the time of HIV/AIDS. In the whole country School Councils were created, as the highest authority in the schools, to help improve their management, with special attention to matters of gender. Unfortunately, the examples that we know of do not really show that things are getting better. The managers of the education systems at all levels will need more solid knowledge about those questions and a strong political will is needed if those changes are to occur effectively.

The fact that women tend to leave school early, without finishing secondary education, is the main reason why numbers of women are low particularly in teacher training institutions, as students or as trainers or managers. The same happens in higher education. All this compromises her presence in the education sector, thus contributing to the prevalence of the idea that men are more capable.

### **Gender perspective in learning materials, at all levels of education**

During the process of curriculum transformation in Basic Education (1995-2003) and the development of new syllabi and instructional materials, due to the work that was being done by civil society, there were hopes that the Government would give special attention to matters related to gender inequality and sexual and reproductive rights in the prevention of HIV/AIDS in the new syllabi and instructional materials. When those materials were published, it turned out that they had changed very little; they still contained gender stereotypes and reinforced existing social paradigms, without contributing anything to change the perception of teachers and students with regard to the rights of women and their status in Mozambican society.

### **Civic education**

The Government, on the other hand, introduced moral and civic education into the curriculum for basic education. However, what is felt until today is a lack of contents and practices to help teachers and students of both sexes get acquainted with and reflect about human rights – human rights in general and human rights of women and children specifically, questions with regard to violence, particularly against women and children. Also, there are no indications that this kind of contents is being dealt with adequately in teacher training courses. The weak link of the education sector, at all levels, with civil society and particularly with the organisations that have knowledge of gender questions and work in the field, makes that the problem of inequality between women and men continues to be dealt with inadequately and that decisions that contradict the Constitution itself are being implemented as is the case with certain ministerial decrees (see below).

### **Regulations about pregnancy in schools and sexual harassment**

Ministerial Decrees 3 and 4 of 2003, while claiming that they were created to promote gender equality in schools and to defend the educational interests of girls, act in fact in the opposite way. Not only do they defend questionable moral values, because of its underlying patriarchal conception, but they also lead to practices that perpetuate discrimination against girls, putting them in a situation that forces them to leave school, even before finishing the basic primary level. The claim that, in case of a pregnancy resulting from a relationship between two students, both should be transferred to night-school, is in practice almost exclusively applied to girls and there are no indications that the same rule is being applied to the boys.

On the other hand, from several cities and towns in different provinces we keep receiving information about girls that had to interrupt their studies because of pregnancy or that were forced to go to night-school because of their age. They face problems related to their safety, including sexual harassment and abuse, from teachers and students as well as from other citizens. Although this problem is known to managers at all levels, including the highest, these regulations are maintained in force and discrimination of women, be they students or teachers, continues. What is more serious is that in most cases the teachers and managers that are involved in sexual harassment and abuse of pupils enjoy a high degree of impunity and the schools dissuade and in certain cases even threaten parents of the victims of sexual abuse not to lodge a complaint with the police authorities as is required by law. The worst “punishment” suffered by the majority of aggressors that are teachers is transfer to another school, where they quietly go on teaching and, in many cases, harassing and abusing more pupils.

All this is made worst by the fact that the Government continues to appoint managers, men and women alike, that are very badly prepared to deal with gender inequalities. Because of their lack of preparation and because of ingrained gender prejudices, it is easily understood that very little can be expected with regard to changes that would help girls to stay in school and improve their status or with regard to training for change of behaviour and of paradigms related to equality of rights. This has a negative impact on the access of women to different levels of education, including vocational training. Consequently their ascent to decision making positions is jeopardised. And that’s how we are faced with an almost complete absence of women as teachers in secondary and higher education and in the training of teachers and other professionals.

### **Recommendations**

- The integration of a gender perspective in education must have an effect on different areas: on the struggle against the constraints that inhibit access and retention of girls in schools, on the kind of integration that she receives in the school and on the removal of obstacles for her to have a career in education.
- In teacher training, the specialised institutions should develop strategies to combat gender inequalities.
- Immediate revocation of school regulations that discriminate girls and punish them for early pregnancies.
- Hard and exemplary disciplinary measures should be taken immediately and urgently against any teacher and technical or administrative staff that sexually harasses or abuses girls in school, without invalidating any criminal measures provided for in the law.
- Inclusion in school curricula of contents that defend values of gender equality and equality within the family, against domestic violence that affects particularly women, and education for sexuality.
- Elimination of any sexist content and stereotypes about gender from school materials at all levels.

## **Article 11**

### **On the adoption of appropriate measures to eliminate discrimination against women in the field of employment**

This article also includes the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

The right to work has gone through profound changes since national independence, reflecting the evolution of the national and international political and economic context. Taking into consideration that it was in this area that the relations of inequality constructed and reproduced by the colonial State were most clearly reflected, the first rupture that took place was with the substantive legislation that was produced by the colonial State and with the institutional framework of the justice delivery system.

The second rupture took place in the second half of the decade of the 80s, when Mozambique adhered to structural readjustment programmes that imposed the adoption of legislative instruments to make it possible to carry out those programmes. This led to the approval of the Constitution of 1990, which was reviewed in 2004, and of legislation in the sphere of employment.

The Constitution of the Republic of Mozambique enshrines in its Article 84 the right to work as a right and a duty of every citizen. It also establishes in its Article 36 the principle of gender equality.

The Labour Law, law 8/98 of 20 July 1998, defines the general principles and establishes the juridical framework that applies to individual and collective labour relations, safeguarding the equality of rights and opportunities between men and women, a remuneration depending on the quantity and quality of the work done, protection, safety and hygiene at work, medical and pharmaceutical assistance and social welfare. It also establishes the right to free association and the right to collective bargaining.

Articles 73, 74, 75 and 76 of the Labour Law deal with the specific rights of female workers, the protection of maternity and the protection of her dignity. Those are the aspects that are highlighted by the Government report, but we also have to point out the following:

- Examining the juridical and legal framework, we notice that the Constitution of the Republic of Mozambique as well as the Labour Law enshrine the fundamental principles that were established in the Convention on the Elimination of All Forms of Discrimination Against Women. However, in practical terms much remains to be done.
- As far as access to employment is concerned, there are still no instruments that allow to effectively monitor the access of women to employment. In cases where there are equally qualified candidates, priority is given to men, alleging that women are less productive than men because of their frequent absences due to their reproductive function and the need of childcare. Some data from the Ministry of Work show that from a total population of 19 million, where 10 million are of working age, in 2005 only 14,956 people registered in centers of the INEFP (National Institute for Employment and Professional Training). A 19.4% of these were women; 4,688 job offers were registered, where 11.6% were for women and 2,918 positions were actually fulfilled, where 12.3% were fulfilled by women (Ministério do Trabalho, 2005). Although these numbers do not refer to the whole country it is indicative of the discrimination that subsists in the area of paid employment.

- The principle of equality of remuneration, established by law and pointed out in the Government report, is being undermined in a subtle way. In real terms, the basic salary is the same for men and women in the same category. However, when additional payments are considered, such as housing allowance or medical and pharmaceutical assistance for all members of the worker's family, the picture changes. A woman is often told that, because she lives with her father or husband, she does not have a right to housing allowance. On the other hand, while medical assistance in the case of male workers covers the wife and children, in the case of female workers it often only covers their children, leaving the husband out.
- The law grants women 60 days of maternity leave that can be taken up from 20 days before childbirth. The first question that has to be posed with regard to this matter is that maternity leave is paid in its entirety by the employer, thus exempting the State of any effective responsibility with regard to the protection of maternity. But examining the reality in most countries, even in the Southern African region, maternity leave is paid for by the different social security systems in place in those countries, in which employers, workers and the State partake.

This fact gives Mozambican female workers a disadvantage in the process of lobbying and advocacy for the ratification of ILO Convention 183, which establishes a maternity leave of 16 weeks, because employers complain that the costs involved would be too high for the companies, a position that can not be simply put aside. This causes Mozambique to be the only country in the region with a maternity leave of only 60 days. The revision of the Social Welfare Law, a debate that has started about five years ago, proposes maternity leave to be included as one of the services rendered by the National System of Social Security. However, the approval of this law has been postponed indefinitely and at the moment it depends on the approval of the proposal for a new Labour Law (substituting Law 8/98 of 20 July 1998).

Examining the Labour Law (8/98 of 20 July 1998) and other legislation that regulate the field of employment, we have to notice the existence of certain omissions:

- The Labour Law enshrines the right to interrupt work for breastfeeding twice daily for half an hour without loss of wage until a maximum of one year. Taking into consideration the lack of crèches in the work place, the distances between the place of residence and work for the majority of women, this right, even though it is part of the law, contributes very little to childcare. It is often used by mothers to enter work later or to leave work earlier.
- The law recognizes the right of female workers to respect and a dignified treatment, punishing any act that jeopardises her dignity. But given the difficulty to prove the violation of this right and the lack of personnel trained to deal with questions of this nature within the labour justice department, many cases are left without any punishment, in detriment of women.
- As for the social security system, created under law 5/89 of 18 July 1989, in spite of the efforts to expand it to all workers, the big majority is still left out: domestic workers, workers in the informal economy and the self-employed. It is important to notice that the Labour Law itself excludes these categories of workers and it is omissive, because it only mentions that it should be applied in everything that can be adapted, but without defining any minimum standards.
- Another problem is the lack of mechanisms that regulate the treatment of workers who, after having contributed for some time to the social security system, see their companies go bankrupt, without having transferred their contributions to the National Institute for Social Security (INSS). Many of the former State companies that were later privatised are

in this situation and many of the workers of these companies are left without any form of assistance. It should be pointed out that of all the workers registered with the INSS, less than half are in the position of active beneficiaries.<sup>16</sup>

It should be pointed out that all this takes place within the context of a struggle to maximise profits and investments on the part of the different economic actors, which has contributed to a certain neglect for any aspects that have to do, among other things, with the protection of women and their families and with social security in cases of inability. In some cases this leads to the violation of the most fundamental human rights of workers, men and women alike. This situation has been abundantly discussed and detailed in the Three-way Conciliation Forums that bring together trade unions, Government and employers. Social exclusion is gaining ground in Mozambique.<sup>17</sup>

In the name of attracting investment and creating more jobs, employment is getting less secure and more precarious, women being the hardest hit in the process.

Certain situations<sup>18</sup> are of great concern:

- The right to free association, enshrined in the Constitution of the Republic and in the Labour Law, is being threatened in many of the newly opened labour units, while union officials are being persecuted and employment is being conditioned on not being a member of the union, as a way of ensuring passivity.
- The revised Labour Law, which has already been billed in the Assembly of the Republic, withdraws many of the rights the workers have acquired. In the name of a more flexible employment, shorter holidays are being proposed, less job security, summary dismissal of workers without the need to pay any compensation or opening disciplinary proceedings, contracting young workers for limited periods up to a maximum of 10 years, among other measures. If approved, this will harm particularly the young who are looking for their first job, and specifically the young women.
- Law 5/2002 protects workers who live with HIV/AIDS and requires that employers set up educational and awareness programmes for the workers; it condemns discrimination and stigmatisation in the work place. However, only very few companies have actually started to carry out these programmes, thus contributing to the spread of the disease and of the number of cases of discrimination, of which women are the main victims, because they are most affected by the disease.
- One of the big problems is the weakness of the labour inspection that, on the one hand, has not enough staff to cover all the needs, and, on the other, has shown itself very vulnerable to bribery; this falls under the direct responsibility of the Government (Ministry of Labour). On the other hand, Labour Courts, as provided for in the Labour Law of 1998, were never created.

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<sup>16</sup> SINTIC, 2001, Situação dos Trabalhadores do sector do caju.- Maputo; INSS, 2003, Relatório anual.- Maputo; ver também relatório de 2004 e 2005.

<sup>17</sup> See specifically: OTM-CS, 2002, Relatório ao IV Congresso, Maputo.

<sup>18</sup> All these situations are described in following reports: OTM-CS, 2002, Relatório ao IV Congresso, Maputo; OTM-CS; CONSILMO, 2005, Balanço do processo de revisão da Lei do Trabalho. Documento elaborado para a 10ª Reunião Plenária do Fórum de Concertação Sindical.- Maputo; OTM-CS; CONSILMO, 2006, Posição do movimento sindical face ao processo de revisão da Lei do Trabalho. Documento elaborado para discussão no Fórum de Concertação Sindical.- Maputo.

### **Recommendations:**

The following should be priorities for the Government:

- Approve the new framework law of social security
- Ratify ILO Convention 183.
- Ensure that in the revision of the Labour Law the rights already acquired by workers and by women are not threatened
- Improve the labour inspection, by fighting corruption actively and by putting the application of the law as its priority; a labour inspection service can be a precious instrument to prevent discrimination of women workers.
- Establish systems to monitor the approved mechanisms, in cooperation with the unions.

### **Article 12**

#### **On the elimination of discrimination in the field of health care and attention to sexual and reproductive health**

There are other articles, related to these rights:

- Article 10 – the right of access to specific educational information and advice on family planning.
- Article 14 – specifies the right of women in rural areas of access to adequate health care facilities, including information, counselling and services in family planning.
- Article 11 – mentions the right of women to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

### **Comments on the Government report**

Mozambique possesses a vast body of legislation geared towards fighting gender inequality in health.<sup>19</sup> The political will to integrate a gender perspective is shown in public health policy, but the implementation of programmes for the defence and promotion of the health of women still have a long way to go, as these are not understood as subjects of the process. The health programmes for women focus on a reproductive health perspective. The most critical aspects of the health situation of women in Mozambique are:

- Low coverage of the Family Planning services and of health services in general, where the lack of infrastructure is just as serious as the shortage in human resources, which are both due to the exiguity of the sector budget.
- High maternal mortality rate.
- Unsafe abortion as the third major cause of maternal mortality, especially among adolescent and young girls.
- Inadequate care for obstetric fistula<sup>20</sup>, as a direct consequence of adolescent pregnancy and early marriage.

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<sup>19</sup> Constitution of the Republic; National Gender Policy; National Health Policy; Law on the Protection of the Child; Protocol to the African Charter of Human and People's Rights on the Rights of Women in Africa, art. 14; Strategic Plan for the Health Sector, 2000-2005; Strategy for the Reduction of Maternal and Prenatal Morbidity, 2000-2005.

<sup>20</sup> In relation to the care for obstetric fistula, it should be mentioned that up to 2004, there were only three specialists in the whole country with the capacity to provide this service, one Mozambican (at the Central Hospital in Maputo) and two foreigners (in Quelimane and Niassa hospitals). Depending on the availability of

- More than 40% of births take place outside health facilities. The three hold ups<sup>21</sup> have not yet been overcome.
- There is no policy for sexual and reproductive health and the existing programs lack a human rights perspective, maintaining the notion of women as mothers and reproducers. As a result, the reproductive health services are conceived and delivered under the designation of “mother and child” services.
- Increase in the rates of HIV and AIDS infection and of sexually transmitted diseases.
- High prevalence of pregnancies in adolescent and young girls.

These problems are partly related to power inequalities between men and women, where women have few possibilities of looking after their health adequately, as they are socially vulnerable and have low bargaining power within the family, do not have adequate control over their own bodies and do not enjoy extensive sexual and reproductive rights.

### **Equality in the Access to Health Care**

The Strategic Plan for the health sector<sup>22</sup> mentions, in the chapter analysing gender and health, that one of the most important questions is related to “possible discrimination, associated with gender, in the access and use of health services. This discrimination can originate in the health services themselves or with the family”.

Notably, this passage indicates that although the National Health Policy aims for equality in the access and use of the health care, reality shows that in practice it does not materialize: the high frequency of deaths associated to unsafe abortion, violence against women including sexual abuse and sexual violence, not to mention the disproportional prevalence of sexually transmitted infections are important health problems from a public health standpoint. These situations clearly substantiate that the human rights dimension is not incorporated into the health care design.

In addition, health sector reports have mentioned that ethnic, religious and socio-economic problems are determining factors in accentuating gender inequality in Mozambican society, and that has negative repercussions on health. Evidence indicates that the use of customary norms and the weakness of the existing legal mechanisms offer few guarantees of fulfilment of the principles of equality in women’s access to health care. On the other hand, the negative attitude of the health personnel and corruption limit this access even more.<sup>23</sup>

Special emphasis must be added to the ongoing “early” or “child” marriage, as they have a deeply negative impact on girl’s health, constraining sexual and reproductive rights and often resulting in a high incidence of obstetric fistulas<sup>24</sup>.

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funds and time, the specialist at the Maputo Central Hospital would travel to other areas of the country to deliver care (Ministry of Health, Maputo, June 2001. Updated Human Resources Development Plan (PDRH+) 2001-2010).

<sup>21</sup> Hold up in the decision to go to hospital, hold up in patient service, hold up in transfer when the situation needs special attention.

<sup>22</sup> PESS 2005-2009, MISAU (Ministry of Health), Mozambique.

<sup>23</sup> PEN - CNCS, 2005-2009.

<sup>24</sup> S/AUTOR, 2006, Gravidez X Pobreza. Interview of Igor Vaz, surgeon and urologist, Mozambique.- In: Rádio Nações Unidas.- (<http://radio.un.org/por/story.asp?NewsID=1188>).

## Right to sexual and reproductive health

The restricted access to sexual and reproductive health services should be analysed taking into consideration health care services in general, especially in the rural areas, but also in the perspective of an institutional framework that lacks a specific policy in this particular sense. The difficulty of access increases as the demand becomes more complex. Coverage of reproductive health care, measured by the rate of births assisted in a health facility, increased from 25% in 1992 to 45.1% in 2003.<sup>25</sup> However, these figures are still far from meeting the needs, as shown in the table below.

**Assistance to births, by area of residence  
And age of the mother at labour**

	Assistance to births		
	Health Professionals	Traditional Midwives	Births in Health Facilities
<b>Area</b>			
Rural	34.2	14.2	34.0
Urban	80.7	3.1	81.0
<b>Age of the Mother</b>			
< 20	53.2	10.9	53.6
20-34	46.5	11.2	46.3
35 or +	44.1	10.0	43.9

Source: IDS, 2003

The services for prevention of mother-to-child transmission have been created mostly in the main urban centres and cover less than 10% of the target population (MISAU- DSC-PTV 2005).

A recent study done in Mozambique to evaluate obstetric care reveals that the few institutions set up to offer exclusive basic obstetric care, such as the peripheral maternities and rural hospitals, cannot manage to provide adequate emergency obstetric care or deal with the main obstetric complications. To make the situation worse, the ratio population/college trained health personnel varies between 4,400 in the city of Maputo and 71,300 in the Province of Zambézia (MISAU, DPC National Report, April 2005). The SMI nurses (*SMI – saúde materno-infantil*, mother and child health care) represent 17% of all health sector personnel and only 40% of health care provider personnel (One SMI nurse per 2,940 women in reproductive age).<sup>26</sup>

In places with difficult access, the reproductive health care services are provided primarily by Community Agents and traditional midwives, without the specific training to deal with obstetric care and associated pathologies. Traditional medicine, mainly traditional treatments, absorbs most of the unmet demand for sexual and reproductive health care.

<sup>25</sup> MISAU, DCS Report, 2004.

<sup>26</sup> MISAU (Ministry of Health), DRH, 2003.

## **Maternal morbidity and mortality**

Maternal mortality is a serious health problem in Mozambique. Data from the 2003 Demographic and Health Survey IDS<sup>27</sup> show that the country's maternal mortality rate is estimated at 408 per 100,000 live births. WHO data shows 1,000 deaths per 100,000 live births, one of the highest rates in the world (WHO, 2004b).

In spite of the fact that Mother and Child Health is a priority of the Health Sector policy, the efforts made by the Mother and Child Health Program have not met with the expected response from women, for a variety of factors, some of which are related to their distance from the health care facilities and the negative attitude shown by some health workers when receiving women. Likewise, the earlier policy from the Ministry of Health to train traditional midwives to provide the rural areas with greater attention and access to reproductive health care was not continued.

## **Family planning**

Due to the fact that several contraceptive methods are frequently out of stock, particularly progestin pills, the program is facing difficulties in some provinces, an indication of the big constraints in the area of logistics of Family Planning, in several provinces, particularly at the district level (Dedge et al., 2005).

## **Abortion**

Since 1985 the Ministry of Health has permitted induced abortion in pregnancies up to 12 weeks, in special clinics and according to specific criteria. In addition, pregnant women that are HIV positive are offered the option in counselling sessions, as part of a national program to prevent mother to child transmission (PTV).

Unsafe abortion constitutes one of the main causes of morbid-mortality in women. The percentage of deaths it causes varies between 8 and 11% of all causes of maternal deaths (Machungo, 2004). On the other hand, complications from abortion make up 8% of all complications received in the health units and 4% of the transfers to better health facilities. Studies by the Central Hospital of Maputo show that the percentage of complications due to abortion is highest among adolescents aged 15-19, which represent 34.7% of the total.<sup>28</sup>

In Mozambique, unsafe abortions are seen as contributing with 9%, on average, to in-hospital deaths. These data show only a small part of the real situation because many women die outside the hospital. Other women, still, die of complications from abortions and are not registered as such, because of social stigma and legal restriction still in place in the country (Dedge et al., 2005).

Studies carried out at the Central Hospital of Maputo indicate that:

- Of the deaths related to induced abortion, 25% are due to infections and 16% to direct maternal mortality. The same studies conclude that women younger than 20 make up 44.3% of all women that were admitted at the maternity ward for treatment of complications caused by a clandestine abortion (Bugalho, 1995).

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<sup>27</sup> Inquérito Demográfico e de Saúde (Demographic and Health Survey), 2003.

<sup>28</sup> MISAU/DSC, Avaliação das Necessidades Para Uma Maternidade Segura Em Moçambique, 1999 and IPAS, Mozambican Abortion Situation, 2001.

- The fatality rate among the women that call on the Central Hospital of Maputo with complications from abortion is 3% (Machungo, 1997).

Ethnographic research among practitioners of traditional medicine show that abortion remains the most requested treatment (Chapman, 2003).

Three frequent problems in Mozambique are the early sexual initiation (median age of 16.1 for girls - INE, IDS 2003), the early pregnancies and the abandonment of the pregnant girls by their partners, making risky abortion among adolescents a real threat (Dgedge et al., 2005).

The legal principles on abortion in Mozambique, included in the Penal Code in force, which dates from colonial times, stipulate a penalty of two to eight years of imprisonment for women that abort and for those who practice it (article 358).

Internationally, legalisation of abortion is seen as one of the conditions for a dramatic reduction in maternal mortality from complications from abortion. However, even if legalisation helps reduce deaths from abortion, it is by no means sufficient to improve the access to abortion services in conditions that are safe for the health of the mothers. Safe abortions during the first 12 weeks of pregnancy are available, on request and with special permission of the hospital director, on a limited number of public sector health care units that have to pay the cost of the procedure. Every year permission is granted to more than 3,000 women. However, access is generally limited to older, urban women, with a higher purchasing power. The current services, based on urban hospitals do not reach the vast majority of Mozambican women, those that are more likely to have an unwanted pregnancy and unsafe abortion – poor women, from the rural areas, the younger and less educated.

According to the WHO, abortion services should consider the following components:

- 1) Services of induced abortion, optional for the cases allowed by law;
- 2) Emergency treatment for complications from spontaneous abortions and those induced in risky conditions;
- 3) Post-abortion contraceptive counselling and provision of methods to prevent the repetition of abortions; links between the optional and treatment services and other services in the area of reproductive health (Dgedge et al., 2005).

There are, however, several limitations to access such as:

- Lack of information and knowledge about the services.
- The candidate for an abortion will have to perform an ultrasound scan to determine the stage of foetal development, a blood test to determine the red blood cell count, a written request to the Director of the Hospital or the Department of Gynaecology and Obstetrics and finally, if it is accepted, she will have to pay for the medical procedure. Total costs vary between 150,000 and 200,000 meticaais, as a minimum (Dgedge et al., 2005).
- In the case of a married woman, she must have her husband's permission and if she is a minor, the authorisation of the parents.

A research study, conducted in 2005 in 45 public health units in the country (Dgedge et al., 2005) to evaluate the situation regarding abortion in the context of maternal mortality, produced the following main results:

- Four health units did not have the minimum conditions to perform an abortion.
- 46% of the units evaluated did not have skilled personnel.
- Concerning delays in services, the women indicated an average of 6.2 hours waiting

- 43% of the professionals mentioned that no high-level sterilisation is done before re-use of the abortion tools.
- More than 40% of the health professionals stated that there is no pain medication for the women subject to curettage or intrauterine manual vacuum aspiration (IUMVA).
- The main abortion service providers stressed the existence of very little privacy, both in terms of sound and of sight in the areas where abortions are being provided.
- Most women were not greeted by the professionals assisting them, and most were not questioned about their medical history or informed about their prognosis and treatment. Worst of all is the fact that women complained about not receiving any recommendation about alert signs that might indicate complications.
- Only 28% of women that did not want to become pregnant again received a contraceptive method.
- Caring for health with special attention to women includes, according to the WHO, the evaluation of 25 elements - the research concluded that the majority of women received less than 15 of those elements.

Since 2004, the Ministry of Health has promoted debates and public discussions in view of proposing a law on legalising abortion in the framework of the legal reform in Mozambique.

### **Health of Adolescents**

According to a report from MISAU (2005), the expansion of the SAAJs (Serviços Amigáveis para Adolescentes e Jovens - Friendly Services for Adolescents and the Young) and adolescent health services continue to be very limited. On average, the SAAJ coverage at the national level and in the peripheral areas is still very limited, representing approximately half of the districts and about 10% of the Health Care Units of the country, evidence of a wide inequality of access.

In 2004, 5,923 adolescents and youngsters were assisted in the SAAJs. Between January and July 2005, a total of 37,196 adolescents and youngsters were assisted in the classic and satellite GATVs, representing approximately 50% of the total number of people assisted. This number illustrates the demand that could be specifically assisted in the comprehensive package of services offered by the SAAJs.

In the 133 SAAJs established until 2005, the pattern of demand of services by adolescents and youngsters show that the most demanded service was counselling followed by contraception. Sexually transmitted diseases form the third most important reason to request the services of a SAAJ, particularly for boys. In 2005, in the 133 SAAJs, 152,966 appointments were registered, 73,966 (48.3%) of them to new users. These numbers indicate that 82% the target of 160,000 adolescents and youngsters assisted in 2005 was met (PEN SIDA, 2004-2008).

The Voluntary Counselling and Testing (VCT) units within the SAAJs are an important entrance door mainly for the male adolescent, showing a better balance in access between girls and boys than the general appointment profile in the SAAJs. Girls are much more frequent users of the SAAJs in general than boys, representing about 80% of the total (except in the provinces of Sofala and Cabo Delgado where the difference between boys and girls is not so pronounced). In the SAAJ of the Central Hospital of Maputo e.g. the situation is not so unbalanced if data for VCT demand are taken into consideration (57% of users are girls and 43% are boys) (MISAU, 2005).

## **Food Security and Nutrition**

### **General comments on the Government report**

- The information in this chapter of the report is very general, limited and outdated. It does not mirror the real situation of women in the area of food security and nutrition.
- In this area, there are limitations on the availability of data differentiating men and women. However, an attempt has been made by the Government and by NGOs to differentiate the data; the recent *Inquérito Demográfico e de Saúde* (Demographic and Health Survey) - IDS - of 2003 is an example of this.

Poverty in Mozambique declined dramatically in the last decades, after the peace agreement of 1992. In 2007, the number of Mozambicans living in absolute poverty fell to 54%, in comparison to the 70% of 1997.<sup>29</sup>

Nevertheless, according to the latest report of UNICEF on the Situation of Childhood Poverty in Mozambique, one third of all households lead by women are poor, as compared to the households lead by men. Poverty in the households lead by men declined by 18% between 1996/97 and 2002/03, while in those lead by women the decline was only 4%.

On the other hand, as mentioned above, the majority of the poor population (80%) lives in the rural areas and their main livelihood is agriculture<sup>30</sup>, fundamental for food security. Despite the fact that agriculture is practiced mainly by women, that still leaves them at a disadvantage because they normally have less access to resources.

Despite improvements in the food security situation, there are still regions in the country where the population suffers from food insecurity. Several factors contribute to this situation, among them the following:

- Low availability of food, vulnerability of the country to natural disasters (drought, floods and storms) and the fact that agriculture is still practiced using traditional, manual techniques, limited access to means of production, inexistence or poor functioning of markets, among other aspects.
- Economic limitations in the access to food.
- Weak access to and use of health services by the population, particularly women and girls.

Recently, the food security situation is also being affected by the high prevalence of HIV/AIDS, especially in the central and southern parts of the country. Also, HIV/AIDS infection rates are higher for women than men. HIV affects the productive members of the household, thereby preventing them from engaging in productive activities, and forcing them to use the scarce resources available for medical care.

Recent information shows that approximately 801,654 people in 62 districts are affected by food insecurity, 50% of them from the Centre and South of the country and from the provinces of Inhambane, Gaza and Tete.<sup>31</sup>

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<sup>29</sup> INE and United Nations Division of Statistics - Millennium Indicators, <http://mdgs.un.org/unsd/mdg/default.aspx>.

<sup>30</sup> IFAD – Rural Poverty, February 2007.

<sup>31</sup> UNICEF – Nutritional Status of Children – South African Region, 2006.

More than 34.8% of the households have food security problems and of those 20.3% are classified as highly vulnerable and 14.5% as very highly vulnerable. The worst diets are found in the households suffering from chronic and transitory food insecurity.

The Demographic and Health Survey (IDS) of 2003 measured the nutritional condition of women with children of less than 5 years of age using anthropometric measurements (Body Mass Index - BMI)<sup>32</sup>. The percentage of women with low stature (less than 145 cm) was also estimated. The average height is an indicator used to diagnose risks in labour, as low stature is related to the small size of the pelvis. Short women are also at risk of giving birth to children with low weight.

The results from the IDS show that, at a national level, more than 77% of women have a normal BMI and only 8.6% have malnutrition problems. The provinces of Cabo Delgado, Nampula, Zambézia and Tete have more malnourished women (BMI under 18.5).

Supplementing with micronutrients, namely vitamin A after labour and iron supplement during pregnancy, is fundamental for the health of mother and child. In relation to access to these micronutrients, IDS has shown that it is very low in the country, only 20.8% of women receive vitamin A after labour and about 14.3% of women say they have taken iron supplement/folic acid during pregnancy.

Recent non published data from SETSAN – GAV<sup>33</sup> (2006) shows that 6.2% of mothers of children younger than five have malnutrition problems (BMI under 18.5), the worse situation being registered in the provinces of Cabo Delgado and Tete (with 10.4% and 10.3%, respectively, having a BMI under 18.5).

#### **Recommendations:**

- Increase the allocation of funds for the community health programme, focusing on sexual and reproductive health in order to improve access and use of resources by women. Unofficial data show that only 27% of the Health budget is allocated to community health, to which reproductive health belongs.
- Policies and programs should incorporate a gender perspective for access and use of health services.
- Mandatory breaking down of data by gender.
- Improve conditions for safe abortions in the health units and particularly the provision of material and technical resources for a better service to the women that require a safe abortion in the health facilities – handling of pain, privacy, attitude of personnel, etc. Failure to provide financial resources in a balanced manner leads to discrimination in the health policy.
- Fight unsafe abortion by legalising it up to 12 weeks of pregnancy.
- Provide women with information about the conditions of access and use of the resources available in the field of sexual and reproductive health.
- Increase quality and quantity of personnel in the reproductive health sector, build the capacity of health personnel regarding professional ethics and establish a code of conduct for health professionals, and make it well-known to the public.

<sup>32</sup> Body Mass Index (BMI) = weight in kilograms divided by the square of the height in meters: BMI under 18.5 is considered underweight; BMI between 18.5 and 24.9 is considered normal.

<sup>33</sup> SETSAN – GAV. Report of Baseline survey of food security and nutrition in Mozambique, December 2006.

- Links to education must be strengthened in order to produce lasting changes and middle to long term results:
  - Introduction of sexual education at all levels of the education system as a form of prevention and empowerment of young girls and boys.
  - Need for better articulation between SAAJs and schools, particularly the youth associations that are active in the schools such as *Generation BIZ*.
- Together with the education sector and the police: raise awareness in order to prevent early weddings and the application of laws that protect minors from sexual abuse and child labor.
- On food security, assure the provision of supplements of nutrients during and after pregnancy.

#### **Article 14**

##### **On rural women**

This article of the Convention recommends taking measures to eliminate discrimination against women in the rural areas in order to insure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, to ensure the right of rural women to participate in local decision-making, access to health care and information, access to social security programmes, education and training, to literacy, to agricultural credit and loans and to adequate living conditions, particularly in relation to housing, water supply, transport and communications.

#### **Comments on the government report**

The Government report focuses on land ownership<sup>34</sup>, on access to rural credit, on access to rural extension services and on environmental policies.

The population of Mozambique is estimated at 18 million inhabitants, 80% of which live in the rural areas and have agriculture as their main means of subsistence. Eighty five percent of peasants are women, practicing subsistence agriculture in the family farming sector and contributing to the national agriculture production. Two thirds of this rural population live in absolute poverty, made up mostly of women and children (PARPA, 2005; TIA, 2003).

The principle of the Agrarian Policy and Implementation Strategy (PAEI, 1997) is the development of agricultural activity in order to achieve food and nutritional security. On the other hand, the Government's Five-Year Programme 2005-2009 in the field of gender states that the situation of women is characterized by difficulty accessing education, health and several resources such as credit, land ownership and weak participation in decision making bodies.<sup>35</sup> The Agrarian Policy (PAEI) recognizes the fundamental role played by women in agriculture, and especially in integrated rural development. Therefore, it gives women the priority in training programs, rural extension and specific projects of agrarian development.

<sup>34</sup> The Land Law was approved in 1997. Although the Law does not authorize a market of land, in reality it exists and is developing. However, that market is distorted because it goes against traditional and legal principles and because it lacks transparency.

<sup>35</sup> Estratégia de Género do sector agrário (Gender Strategy for the Agrarian Sector), MINAG (Ministry of Agriculture), 2005.

However, despite the pivotal role of peasant women in the family economy, they are relegated to second place due to the unequal gender relations. Peasant women are discriminated in terms of acknowledgement of their fundamental rights, in the access and control of the productive, technological and natural resources, and still on the access to the returns of their own work.<sup>36</sup>

Mozambique is essentially an agricultural country, with 80% of its population living in the rural areas (as mentioned before), contributing 20% of the gross domestic product (GDP). This situation reflects the very low agricultural productivity. There is a negative correlation ( $r = -0.79$ ) between the Human Development Index and the percentage of GDP from agriculture in the provinces. This means that, in general, provinces with a higher agricultural participation in the GDP are those with the lowest Human Development Index, i.e., those with the highest levels of poverty. Despite those constraints with impacts on low productivity of Mozambican agriculture this area maintains its main priority for the country development.

Despite all these recommendations in documents and policies for the agriculture sector and the acknowledgement of the importance of the role of rural women in all fields, very little has been done to empower rural women. The document “Gender Strategy for the Agrarian Sector” (MINAG, 2005) describes some of the difficulties and constraints, such as:

- Most research is not focused on the actors, men and women.
- Data is not broken down by gender in the processes of collecting information and processing data.
- Rural women are underestimated. In spite of being the main food producers for the household, they have no right own the land, even though the Land Law (1997) states that women are co-owners of the land titles and asserts that women and men have equal rights to the use, inheritance, transmission and acquisition of land titles (GOM, 1997).
- About 24.8% of Mozambican families are headed by women, but they have more difficulties than men in terms of access, opportunities, capacities and gaining income (TIA, 2003). In traditional law, the man controls the resources.
- Rural women have a poor capacity to negotiate certain aspects of access to extension services and technologies, raising medium to large sized cattle, to credit and markets, etc, due to the high rate of illiteracy (71%).
- Peasant associations that include men and women do not always benefit women as it is usually men who manage them and administer utilities (Osório & Mejia, 2006). In addition, due to lack of identity documents and lack of information, it is difficult for peasant women to register their associations in order to obtain credit.

In addition to what has already been demonstrated by the Ministry of Agriculture, we would like to state the following:

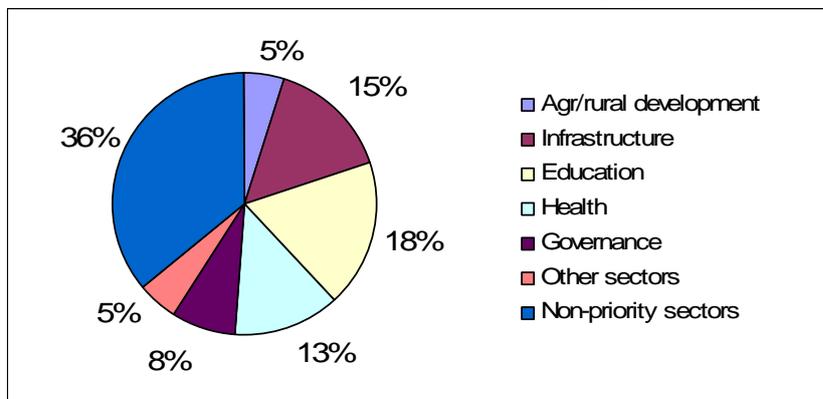
- Women’s participation in the decision making process at the community level is very weak (Baleira et al., 2006).
- The health service network covers only 40% of the country, having its greatest deficiencies in rural areas so women are less likely to receive treatment or advice concerning health in these areas.
- Adult education programs are insufficient to cover the needs of the adult illiterate population.
- Even though the 1997 Land Law recognizes women’s rights to access and use of land, these rights are systematically being left aside during the process of land titling.

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<sup>36</sup> Gender Strategy in the Agrarian Sector, MINAG, 2005.

We would like to underline that although the importance of agriculture is recognized, the distribution of resources in State budgets do not reflect this priority:

**Allocation of resources in State expenditure, as average percentage, 1998-2004**



Source: Human Development Report, UNDP, 2005, Mozambique

About this distribution, the Human Development Report 2005 (UNDP) comments:

Of the sectors regarded as priority in government expenditure, the largest share goes to education, followed by infrastructure and then health. Governance is in fourth place, and agriculture and rural development in fifth. This is the same share as “Other priority sectors”, which includes social welfare, labour and employment, mineral resources and energy. The interconnection between sectors is very large, but perhaps that which brings most benefit to agriculture is the sector of infrastructure, which includes roads, water supply and public works.

It is difficult to propose a change in the order of priority, taking into account the great shortcomings in all sectors, but it would be appropriate to increase the share for agriculture to 10% in accordance with the promise made by African leaders at the July 2003 summit of the African Union held in Maputo.

The recommendation of the above mentioned Report about the necessity to increase the allocation of global and financial resources to the agricultural sector is clear.

**Recommendations:**

Taking into consideration that rural development must be approached from a holistic point of view and given the fact that rural women make up the majority of the population of the country, we make the following general recommendations:

- Breaking down statistical data in the agrarian information systems by gender.
- The involvement of the family sector in the market for land titles should not threaten the basic principle of food security.

In the field of civic rights:

- Make it easier for rural women to obtain an Identity Document and a voter’s card (many rural women don’t have this kind of identification, making it difficult for them to gain access to credit or to organise themselves in associations).
- Implement the decision of the Land Law to integrate women in the community consultations.

In the field of health care:

- Promote courses and debates about food security, first aid, health prevention, sexual and reproductive rights, and sexual and reproductive health care, domestic violence.
- Improve access to water supply.

In the field of education:

- Improve access to literacy and adult education programmes for women.
- Promote practical courses about leadership and business administration for girls and women.

In the field of agriculture:

- Spread information about the rights to land titles among women in rural areas, giving priority to the possibility of co-holding of titles as provided for by law
- Encourage the creation of women's associations and the granting of land titles to associations.
- Provide short course training in agriculture and animal husbandry and low cost technical assistance in order to increase the utilities of household production.
- Provide access to micro-credit for small agricultural projects
- Provide agricultural technical assistance services at low cost
- Train women as extension agents (the percentage of female extension agents in the country is extremely small).

## **Article 15**

### **On the equality of men and women before the law**

The Government's report starts by highlighting the disparity in rights of women and men within the family, stating that this situation had been corrected with the passing of the new Family Law in 2004, admitting to the non-fulfillment of the 3<sup>rd</sup> point of article 5 of CEDAW on the elimination of mechanisms that hindered the legal capacities of women<sup>37</sup>. The report goes on to analyze some of the obstacles that women have in the legal system.

Although we agree with the Government's analysis, we would like to reinforce a number of aspects:

- There are laws that should be revised in order to eliminate all forms of gender discrimination whether explicit or implicit. This aspect was examined above when the implementation of CEDAW in the Mozambican legal order was discussed.
- Although there is no formal difference in men and women's access to the legal system, in practice there are various obstacles that contribute to women's difficult access to formal instances of conflict resolution. These will be discussed below.

A study on the legal administration system (WLSA Mozambique, 2000) revealed that the problems in this area have to do with the deficient functioning of the system (Lack of qualified personnel, precarious infrastructure), shortcomings in the national coverage, bureaucratization, high costs of access and finally the handling of conflicts is permeated by the patriarchal model. Women have even more restrictions as they have fewer resources, are less familiarized with Portuguese, the official language, and have a higher level of illiteracy which makes it difficult for them to follow legal procedures.

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<sup>37</sup> Article 5°, n° 3. "States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void."

This research showed that, independent of the region and social background, the interpretation of conflict by legal agents at various levels is oriented by the construction of gender inequality. As a consequence, an important percentage of conflicts are resolved in contradiction with women's rights and legal norms. For example, there is a tendency to see crimes that occur in the domestic realm, especially those conducted by men against their wives or partners, as not really crimes, as they are socially legitimated (WLSA Moçambique, 2000; WLSA Moçambique, 2002; Mejia et al., 2004). These situations of illegality discourage public complaints, especially on the side of women who have been socialized to resolve problems within the family and the private realm, reinforcing conformity to male dominance.

It must be highlighted that in Mozambique, given the constitutional legal framework, all citizens have the right to a defense and to legal assistance. As a result of the efforts to protect citizen's rights to an adequate legal defense, the Government created the State's Institute of Legal Assistance and Financial Support, with a central office in the capital and offices in five cities and four delegations in the rest of the country. In reference to their performance it must be said that:

- The institute lacks the human and material resources to provide an adequate legal assistance to citizens.
- Some of the legal workers involved have come to charge very high fees for their assistance which are outside the financial capacities of many women victims of violence.
- The activities of the institute do not provide efficient mechanisms for the resolution of problems related to women victims of violence.

A new issue that requires discussion is the legal recognition of community tribunals, by Law 4/92 on the 6<sup>th</sup> of May, as legitimate conflict resolution bodies, as stated in the 2004 Constitution. Regarding the relevance of this for women's human rights, a recent study (Arthur & Mejia, 2006) found that:

- There is a wide diversity in the composition and functioning of these community tribunals, revealing a lack of assistance from mechanisms of control.
- These bodies work according to codes of conduct present in social constructions of so-called common sense, which do not necessarily coincide with laws or with the principle of equality between women and men. All domestic conflicts are decided upon according to traditional gender roles.
- The work of Community Tribunals is often complemented by traditional authorities. A case that took place in 1998 and that reached the Supreme Court reveals how these traditional authorities can be instruments of reinforcement of the institutions of patriarchy: a woman abandoned the man who she lived with, escaping from the systematic aggressions she suffered. She moves to a different area and is taken in by her relatives. She brings her youngest daughter with her, who later dies due to illness. The abandoned man demanded from the woman's relatives "the return of her daughter, alive, or the handing over of another girl child as indemnization. In this way he would secure the quantity that he would later receive as his daughter's *lobolo*." As the problem could not be easily solved, the dispute was taken to the traditional authorities at the area of residence who decided that one of the woman's relatives should hand over a girl child to make up for the one that died. A six-year-old girl was chosen, who was taken to the man's

residence to live as one of his wives. The blame would be lifted once the girl had a daughter and only then could she return to her parent's home.<sup>38</sup>

- The predominance of traditional values is not counterbalanced by the systematic training of those involved or by control in the application of law, and training programs have only recently started at the Center for Legal Training (Ministry of Justice).
- There is a problem of legitimacy of judges since their last election was in 1987. The system of substitution of judges that are no longer active is different in each locality, but it is frequent that they are chosen by local administrative authorities or by the secretary of the dinamizing group (Negrão et al., 2002).

**Recommendations for the women's better access to justice and gender equality before the law:**

- The training courses for magistrates at the Center for Legal Training must be reinforced. A gender relations and women's human rights component is already included, so reinforcement must be in terms of the admissions requirements for the legal career, which should not depend exclusively on formal evaluation, but should consider the candidates position on Human Rights issues.
- It is urgent to guarantee for all citizens the right to legal assistance allocating more resources to the Institute for Legal Assistance and Financial Support for the employment of new and competent personnel, the restructuring of the sector to eliminate corruption and improve responsiveness of service that so far depends on delayed procedures at a very high cost.
- Assistance, training and control over the working of community tribunals and other conflict resolution bodies that so far have provided a form of justice that is based on common sense and custom, ignoring the rights defended by national law.

**Article 16  
On equality in the family and the definition of the roles of men and women**

As the result of a prolonged process, in which the organisations for the defence of women's human rights played a leading role, the first Family Law after independence was approved in 2004 (Law 10/2004, of 25 August 2004). The Law is in close correspondence with the provisions of the CEDAW, specifically Article 16, which determines: "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women (...)." Let's have a closer look at the contents of this law:

CEDAW – Article 16	FAMILY LAW (Law 10/2004, 25 August 2004)
(a) The same right to enter into marriage	<b>Article 7-</b> Marriage is the voluntary union between a man and a women, with the purpose of constituting a family, with the aim to share life fully.

<sup>38</sup> As could be expected, the minor was raped by the man who refused to wait until she reached reproductive age.

(c) The same rights and responsibilities during marriage and at its dissolution;	<b>Article 93</b> – The spouses are mutually bound by the duties of respect, trust, solidarity, assistance, cohabitation and faithfulness. <b>Article 187</b> – The declaration of guiltiness does not annul the right to joint ownership in relation to the common goods, acquired during marriage.
(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;	<b>Article 288</b> - The parents cannot renounce their parental power or any of the rights and duties that that power confers on them. <b>Article 289</b> – The father or mother cannot exempt themselves from their duties in relation to a child born outside marriage.
(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;	<b>Article 100</b> – The couple has the right to adopt and to transmit to their descendants a family name, composed of the family names of the spouses, under the conditions determined by civil legislation. <b>Article 98</b> – Both spouses are free to exercise a profession or other remunerated activity.
(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.	<b>Article 102</b> - The administration of the couple’s goods is the duty of both spouses in equality of circumstances; the couple should favour dialogue and consensus when taking decisions that could affect the common property or the interests of minor children.

As we have seen, the Family Law took into consideration a broad spectrum of rights, with regard to equality of rights between women and men inside marriage and in the family in general, that correspond to dispositions in the CEDAW. Within this law we also find other articles that indirectly contribute to the reduction of discrimination against women. That is the case e.g. with the concept of family (defined in Article 1), duties of the family (defined in Art. 4), the three different forms of marriage (civil, religious and traditional; Art. 16, 1) the recognition of *de facto* unions (Art. 202 and 203), the alimony that a single mother is entitled to (Art. 425, 1), among others. Without any doubt, one of the big steps forward was the recognition of domestic violence as a ground for divorce, although criminal law has yet to define the concept of domestic violence.

However, one of the great flaws of this law is the fact that the recognition of the *de facto* union, the most common form of union in Mozambique, is not considered an impediment for contracting marriage<sup>39</sup>. Studies in this area (Taímo & Sambo, 1997; Loforte, 2000) reveal that in both urban and rural areas couples tend to live together for a number of years before getting married and a proportion never make their unions official<sup>40</sup>. These unions are also highly unstable. This being the case, the recognition of the *de facto* union intended to regulate the distribution of goods becomes problematic if one of the spouses contracts marriage before the *de facto* union has been declared and partition agreement has been reached.

<sup>39</sup> Evidence of the high rate of *de facto* unions is the high proportion of domestic violence cases reported by people living in this situation: out of 3,855 cases of violence reported by people living in cohabitation, 94% are placed by women and men living in *de facto* unions (n=2617) (data from 2004 and 2005, gathered in three provinces; Maputo, Sofala and Inhambane – WLSA, Mozambique).

<sup>40</sup> According to the National Institute of Statistics (INE), 54,8% of women declared living in *de facto* union, compared to 30,8% of men (IDS, 2003-2004).

On the other hand, although the new law provides certain rights to women in terms of control over their bodies, specific legislation in relation to sexual and reproductive rights is still needed. This is a particularly sensitive situation, taking into consideration that with regard to power relations in the exercise of sexuality and reproduction, Mozambican women are still very disadvantaged, as can be seen in such matters as child marriage, high rates of maternal morbidity and mortality and the incidence of HIV/AIDS. These rights are not even incorporated in the Government's gender policy, and the rights related to sexual and reproductive health are completely ignored.

An aspect that must be highlighted is the persistence of early or child marriages<sup>41</sup> even when the current Family Law establishes that the minimum age for marriage is 18. Recent studies (Justiniano et al., 2005; Jesus & Matsinhe, 2005) vulnerable reveal that this practice has continued, especially in rural areas, and is one of the obstacles that girls encounter to continue in school. The impact of this practice on girl's sexual and reproductive health has already been discussed.

#### **Recommendations:**

Considering the above, we recommend to the Government the following:

- Develop a statute to regulate the application of the Family Law and invest financial and human resources to make the Law widely known among formal and informal conflict resolution institutions. Until today spreading information about the law has been left to the civil society organisations.
- Revise that part of the Family Law that deals with the effects of the *de facto* union, the most common form of intimate relationship in Mozambique, so that it is taken into consideration in the following situations: impediment for contracting marriage and inheritance.
- Work emphatically against early marriages through education and awareness campaigns and through the application of the law that criminalizes those responsible for sexual abuse of minors and child labor.

#### **Recommendation 19 of CEDAW On violence against women**

Although the government's report does not specifically address Recommendation 19 on violence against women, the topic is contained in the analysis of various articles and is discussed in more detail in Article 6, on the suppression of the exploitation of women.

- The Government's report recognizes that violence against women is a manifestation of power inequalities between men and women which gains further relevance due to society's acceptance of this form of violence and the failure by the State to protect women and to provide legal assistance.

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<sup>41</sup> This concept is in itself contradictory, as a "marriage" presupposes a voluntary union as the result of the conscious decision of two consenting adults; whenever one of the parts does not fulfill these conditions the union cannot be considered a marriage. It is time to start searching for an appropriate and more incriminating terminology that conveys the proper implications of a practice that goes strongly against the rights of the girl-child.

- It indicates that both government and civil society organizations have included the fight for the eradication of this form of violence in their agendas, including actions for the protection and aid of victims of violence, multi-sector prevention and the revision of relevant laws.
- It gives details on the programs implemented by the Ministry of the Interior to combat violence that include various dimensions: training in the human rights of women, the creation of offices within police stations that specialize in the attention of victims of violence, encouraging recruitment of women into the police force, motivating women already in the police force to continue their training to guarantee equal opportunities with their male colleagues.
- It assesses the obstacles for the development of these programs, especially those related to financial shortcomings, insufficient public awareness campaigns and inadequate legal frameworks.

Without disagreeing with what is presented in the Government's report, we would like to highlight the following:

- Although the official discourse recognizes the existence of violence against women, it denies, in practice, that this is the result of gender inequality. As a result, policies are aimed at controlling the manifestations of violence and do not act at the root of the problem, namely, the power relations between men and women that underpin the patriarchal system. In practical terms this means that actions are directed towards victim assistance and the criminalization of aggressors, leaving the social institutions that tolerate violence against women untouched and treating violence as a "normal" way of resolving conflicts between husband and wife.
- There is a strong counter-offensive at the media level, influenced by some of the more conservative sectors of society, which presents violence against women and specifically domestic violence, as isolated cases or as a result of the violent disposition of some men. The government has overlooked this confrontation, disregarding situations where a violent tone has been used against activists from organizations that fight against this form of violence. (This aspect has been addressed in article 5 on gender roles, custom and stereotypes.)
- The legal changes aimed at combating violence against women (the revision of the penal code, the passing of a law against domestic violence against women and another law against the trafficking of human beings) has encountered resistance both at the public level and at the level of governmental institutions that are responsible for the process, as has been discussed above. (The implementation of CEDAW in the judicial order in Mozambique).

In terms of the programs that are currently being implemented we must make positive reference to the initiative, supported by the Ministry of the Interior, of constituting specialized offices within police stations that attend women and children that have been victims of violence. Created in 1999, these specialized offices for victims of domestic violence constitute the institutional response to the felt need for a more efficient support to cases of violence. Up until the creation of these offices, women that went to the police to report domestic violence were frequently dismissed by police officers on duty who would even suggest that they should never return with private problems between husband and wife. Today, the specialized offices represent a space where, for the first time at the State level, women can report violence and expect their rights to be defended<sup>42</sup>.

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<sup>42</sup> See Mejia et al, 2004; Osório, 2004; Arthur & Mejia, 2005.

However, besides the excellent work on this particular topic, these offices need to be reinforced:

- There is a low level of training of police officers working in the offices, which results in an inadequate understanding of the structural nature of gender violence and a weak command of the legal instruments available to respond to these crimes. The police officers working in these offices are frequently transferred for unknown reasons, and there is a constant starting over with untrained personnel;
- The offices are understaffed, making 24 hour and weekend attention unfeasible, not covering the time frames where events of domestic violence are statistically more likely to occur.
- The physical space of these offices is often inadequate, functioning in overcrowded rooms or hallways that do not provide an environment of tranquility and confidentiality
- There is a shortage of even the most basic working material, such as paper and forms.
- There are no written guidelines that clearly define the duties of these offices, favoring discrimination from other sectors of the police force that see this as not “proper” police work.
- In most cases these offices do not have enough autonomy to decide when a complaint should be followed by the opening of a criminal offence process, and this usually depends on police station superiors.
- The offices have assumed new responsibilities that were not foreseen, such as counseling of conflicting spouses. This is due to the reluctance of police officers to criminalize acts of domestic violence and also due to victim’s expectations that are often not to put their husbands in prison but rather to have the police influence the husband’s violent behavior. Although these new counseling functions could be a legitimate function of these offices, so far the police officers involved have no specific training and their advice often reinforces and perpetrates the patriarchal order, insisting on the dominant gender hierarchy.
- The police officers that work in these offices are often excluded from systems of promotion as it is perceived that they are not doing “proper police work”.

One of the obstacles for the reinforcement and development of these Offices is the opposition encountered from a number of heads of the police force since their creation by recommendation of the Ministry of the Interior, as stated in the strategic plan (2004-2011). There is therefore an urgent need to work on awareness within the police force. It would be an enormous setback if conservative forces succeeded in eliminating these offices from police stations, or in altering the concept and purpose under which they were created. As an example, there has been internal pressure to alter the designation of “Offices for the Attention of Women and Children Victims of Violence” to include men, arguing that there are also cases of men that have been assaulted by women.<sup>43</sup>

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<sup>43</sup> This argument has also been used to hinder the initiatives of civil society organizations. The position finds support in the growing number of men that have started to use these Offices. However, data analysis shows that less than 0.5% of reports generated by men in the offices are complaints about physical abuse or any other form of violence. The rest represent men that come to the Offices to ask for help to persuade their wives to return home, to “punish” them for arriving home late, or for not fulfilling their duties. (WLSA Mozambique, 2007 in response to the article: “Domestic Violence: the draft law needs adjustment” By Lázaro Mabunda, O País, 2/3/2007”).

There are also vast voids in other important areas of to attention of victims of violence:

Medical and Psychological assistance - To this day the victims of violence are not given priority or free attention in the already precariously insufficient health services (as mentioned in article 12). Even if the costs are considered minimal, victims of violence and their relatives must cover all medical expenses including medicines. Psychological attention is one of the most deficient, partially covering the city of Maputo through Kulaya and the Child and Youth Psychological Rehabilitation Center, and the city of Beira through the Central Hospital. These deficiencies are of great consequence, considering that one of the main problems that victims face is trauma, loss of self esteem and depression.

Gathering of proof/ Forensic Medicine Services – In the country there is a small number of legal doctors and legal medicine services are located only in the four mayor hospitals in Maputo, Sofala Zambezia and Nampula, hampering the elaboration of legal-medical reports that can stand as proof of aggressions in a court of law. It is therefore frequent that evidences of aggression disappear by the time the criminal process against the aggressor take place.

In localities without forensic medicine services, ordinary doctors, gynecologists (in cases of sexual abuse) or even nurses provide this service. Their task is to provide medical support and record the victim's injuries; however, reports often lack details or thorough analysis given the lack of adequate equipment for the elaboration of suitable legal statements that can substantiate sufficient proof of the occurrence of domestic violence. As a consequence cases cannot proceed due to lack of medical – legal support.

Legal Assistance – Given the difficulties encountered in the functioning of the State's Institute of Legal Assistance and Financial Support as discussed above (article 15), civil society organizations have invested in this field, especially in urban areas. These organizations provide attention, legal assistance and support for the defense of victims in courts of law. This work is carried out by law professionals (lawyers, legal technicians, and trainees).

In terms of legal frameworks, as discussed above (“The implementation of CEDAW in the Mozambican legal order), some current legal instruments must be urgently revised, such as the Penal Code, and new legislation must be developed in new areas such as domestic violence against women and the trafficking of women and children. These legal modifications that aim to guarantee equal rights between men and women find strong resistance from multiple sectors of society. The government displays a favorable official discourse but endorses contradicting arguments to explain the slow pace or reluctance to implement change.

### **Recommendations**

- The government must give absolute priority to the revision of laws regarding violent crimes against women and the passing of new laws on the subject, to ensure equal treatment for women and men, even if this requires measures of positive discrimination.
- The police station Offices for the Assistance of Women and Children Victims of Violence must be strengthened, upholding the original purpose for their creation. This implies actions towards their formalization, the assignation of a budget, the creation of better material conditions for their operation, more resources for training of relevant police officers and acknowledgement of their work through promotions, in equal terms with other police officers.

- Awareness of the problem of violence against women must be raised within the police force, introducing the subject as a thematic unit in professional training and other training activities.
- There is an urgent need to increase investment in the following areas of assistance to women who are victims of violence: Legal assistance services, free and priority health care and psychological treatment, legal medicine and shelter homes.
- There is a need for public campaigns to raise awareness of gender violence, introducing educational programs in schools and youth organizations, promoting values of equality and respect in relations between men and women at home and in the public sphere, and advancing the benefits of communication, and condemning violence against women as a crime.

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