


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
<i>No. 31 Bijilo Annex Lay-out, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) 441 05 05 /441 05 06, Fax: (220) 441 05 04 E-mail: au-banjul@africa-union.org; Web www.achpr.org</i>		

Consideration of Reports Submitted by States Parties under Article 62 of the African Charter on Human and Peoples' Rights

Concluding Observations and Recommendations on the Second and Combined Periodic Report of the Republic of Mozambique on the Implementation of the African Charter on Human and Peoples' Rights (1999 - 2010)

I. INTRODUCTION

1. The Republic of Mozambique (Mozambique) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter), having ratified the same on 22 February 1989.
2. Mozambique ratified the Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women in Africa (the Maputo Protocol), on 09 December 2005.
3. Mozambique submitted its Initial Report to the African Commission on Human and Peoples' Rights (the Commission) at the 16th Ordinary Session, which was held in Banjul, the Gambia, from 25 October to 3 November 1994.
4. The present Report, which covers the period from 1999 and 2010, was considered by the Commission during its 55th Ordinary Session, which was held in Luanda, Angola, from 28 April to 12 May 2014.
5. The Report was presented to the Commission by the Delegation from Mozambique, led by **Her Excellency Maria Benvinda Levi**, Minister for Justice of the Republic of Mozambique.
6. The Report highlights developments which have taken place in the country in the area of the promotion and protection of human and peoples' rights, in addition to the

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legislative, administrative and other measures put in place to comply with the country's obligations under the African Charter.

7. The present Concluding Observations give an account of the positive aspects, the factors restricting the enjoyment of human rights and the areas of concern based on the content of the Report and information given during presentation of the Report. Finally, the Commission makes recommendations to the Republic of Mozambique on measures needed to strengthen the enjoyment of human rights as guaranteed by the African Charter, as well as other relevant regional and international human rights instruments.
8. The Commission reiterates the conclusions and recommendations stated in its Reports of Promotion missions to Mozambique, which were undertaken in 1997, 2000, 2001 and 2010.
9. The Commission commends the Delegation for its frank and constructive dialogue during the presentation of Mozambique's Second Periodic Report, and for the additional information provided regarding the concerns raised by Members of the Commission.

II. POSITIVE ASPECTS

The Commission:

10. Commends the efforts made by Mozambique in preparing and presenting its periodic report in accordance with the provisions of Article 62 of the African Charter;
11. Notes that Mozambique has ratified or acceded to most of the relevant regional and international instruments on the promotion and protection of human rights, including:
 - The African Charter on the Rights and Welfare of the Child;
 - Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol on the African Court);
 - The Convention on the Elimination of All Forms of Discrimination against Women;
 - Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
 - The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture);
 - The International Covenant on Civil and Political Rights;

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- The Second Optional Protocol to the International Protocol on Civil and Political Rights, aiming at the abolition of the death penalty;
 - The Convention on the Rights of the Child;
 - The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;
 - The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
 - The Convention on the Rights of Persons with Disabilities;
 - Optional Protocol to the Convention on the Rights of Persons with Disabilities;
 - The Convention on the Elimination of All Forms of Racial Discrimination; and
 - The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
12. Notes that Mozambique has enacted laws to promote and protect human rights including *inter alia*: the Law on Domestic Violence against Women (law no.29/2009); the Law on the Prevention and Suppression against Human Trafficking, Especially Women and Children (law no.6/2008); the Law which Protects HIV Positive Workers from Discrimination in the Workplace (law no.5/2002); the Law on the Promotion and Protection of Children (law no.7/2008); the Regulations on the Technical Provisions for Enhanced Accessibility by Citizens with Physical Disabilities and/or Impaired Mobility to Public Buildings and Areas; the Family Law (law no.10/2004); and Law no.3/2014 which provides for the Promotion and Protection of the Rights of Elderly Persons;
13. Welcomes the development of policies and programs put in place to ensure protection of the rights of vulnerable groups, including: the Gender Policy and Implementation Strategy, the Elderly Policy, the National Plan of Action for Disability, and the Strategy for Disabled Person in Civil Service;
14. Takes note of the Basic Social Allowance Program which provides financial assistance to families living in absolute poverty throughout the country;
15. Commends the measures taken to promote gender equality and guarantee equal opportunities for men and women, including establishing the National Council for the Advancement for Women, the Gender Coordination Group and the Gender Strategy for the Civil Service;
16. Commends the Government for abolishing the death penalty, as stated in Article 40(2) of the Constitution (2004);
17. Welcomes the establishment of a specialized brigade to deal with human trafficking, which liaises with the Offices and Departments catering for women and children who are victims of violence;

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18. Welcomes the accession to the Optional Protocol to the Convention against Torture on 01 July 2014, and further notes with satisfaction that Mozambique has mandated the National Human Rights Commission to undertake regular visits to the country's prisons and detention centres;
19. Welcomes the measures which have been put in place to modernize the police force, including through establishing the Police Science Academy (ACIPOL) which provides training including courses on human rights for police personnel, and the Basic Penitentiary College of National Prison Service in 2012, which provides training to prison wardens;
20. Notes with satisfaction that the Government began construction of seven (7) new prisons in 2013, and rehabilitated six (6) prisons;
21. Notes that a prison for juveniles has been established in Boane, Maputo Province;
22. Commends the Government's efforts to ensure access to justice, including through establishing the Legal and Judicial Training Centre (CFJJ) which provides training to judicial officers, creating the Legal and Judicial Aid Institute (IPAJ) which provides legal aid to indigent Mozambicans, and launching a program for the construction of Justice Halls in the country's districts;
23. Commends the efforts by the Government to ensure access to potable water for the entire population;
24. Notes with satisfaction the political will demonstrated by the Government in promoting the right to employment, including through ratification of a number of ILO Conventions and establishing the Employment and Professional Training Strategy (2006-2015) to provide training to the youth and adults;
25. Commends the enactment of the Law on Socialization of Medicine (law no. 4/87) which provides free maternal and child health care, namely prenatal, birth, postnatal, admission and child care up to the age of five;
26. Welcomes the establishment of the National Partnership for the Promotion of Neonatal and Maternal Health Care in 2010;
27. Commends the Government's commitment to improving health care for the population through efforts such as the rehabilitation and reopening of 500 primary health care centres;

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28. Commends the Government for investments made towards effective preventive health care programs, which have resulted in a steady decline in the number of malaria cases reported, and the eradication of leprosy in 2008;
29. Commends the provision of abortion for women, in cases where the life or health of the woman is at risk;
30. Commends the Government's efforts and achievement in combating HIV, including through launching the National Strategic Plan Against HIV for 2010-2014, introduction of Vertical Transmission Prevention (PTV) to seven hundred and forty four (744) health units in the country and establishing the Orphan and Vulnerable Children Action Plan through which orphan and vulnerable children units were set up to ensure access of basic social services to these children;
31. Commends the Government for its free and compulsory primary education policy, in addition to the establishment of an all-inclusive policy for children and youths requiring special education;
32. Appreciates the efforts made by the Government to prevent and curb domestic violence, including through establishing two hundred and thirty six (236) Offices and Departments which provide counselling and other assistance to victims of domestic violence;
33. Welcomes the efforts made by the Government to promote and protect the rights of children, including developing the National Action Plan for Children in 2005, and establishing the National Children's Rights Council to ensure the coordination of efforts made by the various Government institutions and civil society organizations aimed at protecting and defending the rights of children;
34. Notes with satisfaction the efforts of the Government on registration of births, including provision of free registration, extension of the grace period for free registration to one hundred and twenty (120) days, and establishing registration units next to maternity hospitals;
35. Welcomes the measures put in place to ensure the rights of people with disabilities, including, adopting the Resolution No. 20/99 on persons with disabilities, the All Inclusive Education Policy and a National Plan on Disability;
36. Notes with satisfaction the legislative instruments enacted to protect the environment and guarantee sustainable development.

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III. FACTORS RESTRICTING THE ENJOYMENT OF THE RIGHTS GUARANTEED IN THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

37. Shortly after Mozambique attained its independence in 1975, the country plunged into and endured a protracted sixteen (16) year civil war between the Front for the Liberation of Mozambique (Frelimo) and the Mozambique National Resistance movement (Renamo). The conflict resulted in the loss of lives, damage to infrastructure, and displacement of Mozambican refugees who sought asylum in neighbouring countries. While the conflict came to an end after the signing of the General Peace Accord in Rome in 1992, recovering from the effects of war affected enjoyment of the rights enshrined in the African Charter.
38. Since the end of the civil war and following the signing of the Peace Accord, Mozambique has enjoyed relative political stability and significant economic growth. However, during the run up to the national and presidential elections in October 2014, there was renewed conflict between government forces and the revived Renamo rebel movement, which had the potential to destabilize the country and restrict enjoyment of the rights guaranteed in the African Charter.

IV. AREAS OF CONCERN

While acknowledging the significant efforts made by the Government of Mozambique to promote and protect human rights, the Commission is however concerned about the following:

39. The non-ratification of a number of relevant regional and international human rights instruments, namely:
 - The African Charter on Democracy, Elections and Governance;
 - The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa;
 - The International Covenant on Economic, Social and Cultural Rights;
 - The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; and
 - The Rome Statute of the International Criminal Court.
40. Failure by Mozambique to make the declaration under Article 34(6) of the Protocol on the African Court, accepting the competence of the Court to receive cases from individuals and non-governmental organizations (NGOs);
41. The delay in reviewing and enacting the following legislation:

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- The Draft Associations Bill;
- The Mining Law;
- The Succession and Inheritance Law.

42. The lack of specific information on the participation of civil society organizations in the preparation of the Periodic Report;

Article 1

43. The lack of gender disaggregated data in the various areas of human rights which prevents the Commission from making an objective assessment on the challenges and achievements made in the promotion and protection of human rights;

Article 2

44. The low level of representation of women in decision making positions at the local level, and in the armed forces;

45. The existence of discriminatory legislation still in force in the Code of Criminal Procedure and the Succession and Inheritance law, which restrict the rights of women, in addition to customary practices which discriminate against women, such as widows who are left with no rights to inheritance;

Article 4

46. The failure to curb cases of unlawful killings of suspected criminals through public lynching;

Article 5

47. The lack of specific legislation defining and criminalizing torture;

48. The lack of information on dissemination to the general public, and training conducted on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines);

49. The lack of information on investigation and prosecution of cases of torture committed by law enforcement agents, including the police and prison wardens, and the award of reparations to victims;

50. The low rate of prosecution of perpetrators of human trafficking;

Article 6

51. The lack of adequate prison infrastructure resulting in prison overcrowding;

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52. The lack of separation of pre-trial detainees and convicted prisoners as a result of prison overcrowding;
53. The cases of pre-trial detainees held longer than the legally prescribed time;
54. The lack of information on the existence of educational and vocational training to facilitate the reintegration of prisoners into society following completion of their prison sentences;

Article 7

55. The lack of clarity on the status of community courts, developed by the Government to establish a connection between formal and informal justice system, in addition to inadequate provision of resources to ensure these courts function effectively;
56. The lack of an established curriculum on human rights for training courses conducted by the Legal and Judicial Training Centre;

Article 9

57. The restriction on freedom of expression as a result of criminal libel and defamation laws, and harassment of journalists;

Article 10

58. The delay in the review process of the framework within which civil society organizations operate;

Article 12

59. The Commission is concerned about the reservations which the Government made to the UN Convention Relating to the Status of Refugees;
60. The lack of information on measures put in place to protect the rights of refugees and migrants;

Article 14

61. The lack of information on the specific measures to ensure access to land by women, in light of traditional beliefs in areas such as succession;

Article 16

62. The public health system includes a very small number of rural hospitals;
63. The lack of information on measures put in place to ensure expansion of health services and the HIV control programs, including the provision of anti-retrovirals, to the rural areas;

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64. The current allocation of 9% of the State budget to the Health Sector, which is less than the 15% minimum amount stated in the Abuja Declaration on HIV/AIDS, Tuberculosis and other Related Infectious Diseases;
65. The low rate of access by women to family planning services;

Article 17

66. The absence of detailed information on the measures taken to achieve the full realization of free primary education, including measures relating to children living in rural areas and children from indigenous communities;

Article 18

Women

67. The lack of current information on the Government policy in place to address violence against women following the National Action Plan for Preventing and Combating Violence Against Women in Mozambique of 2008 - 2012;
68. The lack of information on measures, programs or policies put in place to address violence against women in the rural areas;
69. The lack of information on investigation and prosecution of cases of violence against women in the courts;
70. In spite of the policies put in place, the Commission is concerned about the high maternal mortality rate;

Article 18

Children

71. The lack of information on the prevalence of harmful cultural practices, including female genital mutilation (FGM) and early marriage;
72. The incidence of child labour;

Article 18

Older Persons

73. The lack of detailed information on the specific measures put in place to ensure protection of elderly women accused of witchcraft;

Article 21

74. The lack of information on the measures put in place to monitor the exploitation of natural resources by foreign companies in relation to the economic and material benefit accruing to the country;

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75. The lack of free, prior and informed consent of Mozambican populations resettled as a result of mining and development projects;

Article 26

76. The lack of information on the National Human Rights Commission, the national human rights institutions mandated with the promotion and protection of human rights;

Human Rights Defenders

77. The lack of information on legislation and measures which have been put in place to ensure the protection of human rights defenders;

Indigenous Populations/Communities

78. The lack of information on indigenous populations, in addition to policies or programs to ensure protection of this vulnerable group.

V. Recommendations

79. In view of the foregoing, the Commission recommends that the Government of Mozambique should:
- i. Take the necessary measures to ratify and domesticate the following regional and international human rights instruments:
 - The African Charter on Democracy, Elections and Governance;
 - The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa;
 - The International Covenant on Economic, Social and Cultural Rights;
 - The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; and
 - The Rome Statute of the International Criminal Court.
 - ii. Make the declaration under Article 34(6) of the Protocol on the African Court to allow individuals and NGOs to seize the African Court directly;
 - iii. Expedite the revision, enactment and dissemination of laws which are being drafted or amended;
 - iv. Ensure that all the relevant stakeholders, including human rights NGOs, are involved in the preparation of periodic reports;

Article 2

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- v. Enact a quota law to increase women's representation in decision making institutions and strengthen the existing measures to sensitize Mozambican women, in order to increase their leadership and participation in the development and management of the country;
- vi. Repeal laws that discriminate against women and ensure dissemination and sensitization of the general public on legislation prohibiting discriminatory practices against women;

Article 4

- vii. Take all necessary measures to ensure prompt investigation and prosecution of perpetrators who commit the crime of public lynching, in addition to dissemination of information to sensitize the general public on the illegality of the crime;
- viii. Enact specific legislation defining and criminalizing torture, in accordance with the Convention against Torture and the Robben Island Guidelines;
- ix. Ensure the dissemination and training on the Robben Island Guidelines, in order to popularize them;
- x. Adopt robust measures to combat torture committed by law enforcement agents, including through ensuring prompt investigation and prosecution of these cases;

Article 5

- xi. Take the necessary measures to implement, disseminate and raise awareness on the Law on the Prevention and Suppression against Human Trafficking, specifically targeting law enforcement officers such as police officers, prison warders, border guards and customs officers;

Article 6

- xii. Expedite construction and rehabilitation of prisons, including through allocating the necessary resources to the prison sector;
- xiii. Take all necessary measures to adopt alternative sentencing policies and imposing non-custodial sentences such as community service, in order to reduce overcrowding in prisons;
- xiv. Ensure strict enforcement of the law on pre-trial detention, in addition to respect of the durations of police custody and pre-trial detention in accordance with the law;
- xv. Introduce appropriate policies to provide vocational training in prisons, in order to facilitate the social reintegration of prisoners into society;

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- xvi. Strengthen the National Human Rights Commission to ensure effective fulfilment of its mandate to undertake visits to the country's prisons and detention centres;

Article 7

- xvii. Enact legislation clarifying the status of community courts in the Mozambique judicial system, and ensure provision of necessary resources for their effective functioning;
- xviii. Ensure that the curriculum of the Legal and Judicial Training Centre includes training on relevant regional and international instruments, including *inter alia* the African Charter, the Maputo Protocol, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa;

Article 9

- xix. Take the appropriate measures to decriminalize defamation and press offences, in addition to guaranteeing freedom of expression and freedom of the press to create an enabling environment for journalists;

Article 10

- xx. Enact legislation which provides for the registration and operation of civil society organizations;
- xxi. Step up efforts to improve the relationship between the Government and civil society organizations;

Article 12

- xxii. Review and consider withdrawing the reservations to the UN Convention Relating to the Status of Refugees;
- xxiii. Ensure that relevant policies and programs are put in place to protect and provide assistance to refugees and migrants;

Article 14

- xxiv. Take the necessary steps to address through legislative and other measures concerns regarding unequal access to land by women;
- xxv. Step up efforts to provide affordable housing for all Mozambicans;

Article 15

- xxvi. Adopt regulations and policies on youth employment, including monitoring implementation of the Employment and Professional Training Strategy (2006-2015);

Article 16

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- xxvii. Step up efforts to expand the public health system by prioritizing construction and rehabilitation of health centers in the rural areas;
- xxviii. Adopt appropriate policies to provide adequate resources to rural health centers, to ensure provision of medical services to these areas;
- xxix. Take all necessary measures to ensure allocation of the requisite budget to the health sector;
- xxx. Strengthen reproductive health programs and policies in order to ensure increased access to family planning by women and adolescent girls;

Article 17

- xxxi. Continue to take all necessary measures to guarantee that free and compulsory primary education is universal, including ensuring access to children from rural areas and indigenous communities;
- xxxii. Monitor and ensure effective implementation of the All Inclusive Education Policy;

Article 18

Women

- xxxiii. Ensure the adoption of training on policies and programs to implement the Law on Domestic Violence against Women, in order to build the operational and institutional capacity to combat violence against women;
- xxxiv. Take the necessary measures to ensure expansion of programs to address domestic violence to the rural areas;
- xxxv. Adopt robust measures to combat violence against women including through ensuring prompt investigation and prosecution of such cases;
- xxxvi. Strengthen existing programs to reduce the high rate maternal mortality rate;

Article 18

Children

- xxxvii. Take the necessary measures to prohibit and prevent harmful cultural practices including female genital mutilation and early marriage;
- xxxviii. Adopt measures to combat child labour and ensure prompt investigation and prosecution of perpetrators;
- xxxix. Monitor the program on registration of births, to ensure its effective implementation;

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Article 18

Older Persons

- xl. Step up efforts to protect elderly women by adopting concrete measures to address abuses committed on elderly women who are suspected of witchcraft;
- xli. Monitor and ensure effective implementation of the National Plan on Disability;

Article 21

- xlii. Ensure respect of the right to dispose of natural resources;
- xliii. Ensure consultation with local communities to provide the opportunity for free, prior and informed consent in advance of any mining or development project;

Article 26

- xliv. Ensure that the National Human Rights Commission enjoys full independence and is provided the necessary human, material and financial resources to carry out its mandate effectively, in accordance with the Paris Principles;

Human Rights Defenders

- xlv. Adopt legislative measures to ensure the protection of human rights defenders;

Indigenous Populations/Communities

- xlvi. Adopt legislative measures to recognize the rights of indigenous communities in Mozambique, in addition to developing programs and policies, with the adequate financial resources provided, to ensure promotion and protection of their rights;
- xlvii. Ensure prompt authorization for the Commission to undertake promotion missions on its territory, as requested;
- xlviii. Take the necessary measures to establish mechanisms for generating accurate statistical data on relevant issues, including information on vulnerable and marginal groups, and include current statistics and gender disaggregated data in the next periodic report;
- xlix. Inform the Commission, in its next periodic report, of the measures taken to address the above issues of concern, in order to ensure effective implementation of the recommendations contained in the present Concluding Observations.

Adopted at the 17th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, held from 19 to 28 February 2015, in Banjul, The Gambia

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