



## 人权理事会

## 第十七届会议

## 议程项目 3

增进和保护所有人权——公民权利、政治权利、  
经济、社会和文化权利，包括发展权

## 法官和律师独立性问题特别报告员加芙列拉·克瑙尔的报告

增编

## 访问莫桑比克\*

## 内容提要

应莫桑比克政府的邀请，特别报告员于 2010 年 8 月 26 日至 9 月 3 日和 12 月 6 日至 10 日访问了该国。访问包括走访首都马普托、Beira 和 Nampula 市以及 Meconta 地区。

报告审查了影响司法部门独立的因素，以及确保在莫桑比克自由和独立地从事法律专业工作的条件，如司法部门参与决定其预算；法庭费用；工资；以及案件的分派等。报告简要分析了规范司法部门的法律和政策框架，侧重于诉诸司法的各种障碍。

报告分析了法官的叙级和晋升；治安法官的任期和免除；惩教机构和公平审判保障；以及性别和司法部门的情况。报告介绍了莫桑比克政府和民间社会组织在联合国和捐赠界支持下采取的许多令人鼓舞的举措。最后，报告提出了一些建议，涉及加强司法制度和确保司法部门独立；治安法官和法官的独立和廉正；检察官的公正以及自由从事法律专业问题。

\* 本文件的内容提要以所有正式语文分发。报告本身载于内容提要附件，仅以提交语文分发。

## Annex

### **Report of the Special Rapporteur on the independence of Judges and Lawyers, Gabriela Knaul, on her missions to Mozambique (26 August-3 September 2009 and 6-10 December 2010)**

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## I. Introduction

1. The Special Rapporteur visited Mozambique from 26 August to 4 September 2010 and from 6 to 10 December 2010, at the invitation of the Government. The mission was facilitated by the United Nations Resident Coordinator *ad interim*, the United Nations Development Programme (UNDP) and the World Food Programme (WFP) and included visits to the capital, Maputo; the cities of Beira and Nampula and to Meconta District in Nampula Province.

2. The Special Rapporteur met with the President of the Parliament and parliamentary members of the Commissions of Petitions, Constitutional Affairs and Social Affairs; the President of the Supreme Court of Justice; the Minister of Justice and Government officials from the Institute for Legal Assistance and Representation (IPAJ); the National Prisons Service (SNAPRI); the Technical Unit for Legal Reform (UTREL); the Department for the Promotion and Development of Human Rights; the National Directorate of Registries and Notaries; and the Centre for Legal and Judicial Training (CFJJ). She also met with the regrettably now deceased Deputy Minister of Planning and Development and her legal adviser; the Minister of Finance and senior ministry officials.

3. The Special Rapporteur also held consultations with the President of the Constitutional Council; the President of the Administrative Tribunal; magistrates of the High Council of the Judiciary; the Attorney General; the Minister of Foreign Affairs and Cooperation (MINEC) and the Permanent Secretary of his cabinet. She was not able to meet with the Minister of the Interior despite her repeated requests.

4. In Beira, the Special Rapporteur met with the Municipal Council; judges and members of the Provincial Commission for Legality and Justice. In Nampula, she met with the Provincial Commission for Legality and Justice, including the Provincial Director for Justice (Ministry of Justice); the President of the Provincial Tribunal; the Provincial Prosecutor; the Provincial Commander of the National Police; the Provincial Director of SNAPRI; the Provincial Director of IPAJ; the Provincial Director of the Criminal Investigation Police (PIC); and a representative of the provincial chapter of the Mozambican Bar Association. She also held consultations with the legal director of the provincial tribunal and civil society organizations.

5. In the district of Meconta, the Special Rapporteur met with community judges from the following administrative posts: Nancompala; Nacavala; Corrane; Meconta Sede and Nomialo. She also visited the district tribunals of Meconta and met the administrator of the district, as well as members of the District Commission of Legality and Justice, including the Presiding Judge; the District Prosecutor; a representative of the Police (PRM) and a legal assistant of IPAJ.

6. The Special Rapporteur also held consultations with the United Nations Resident Coordinator *ad interim*; representatives of the United Nations Children Fund (UNICEF); the United Nations High Commissioner for Refugees (UNHCR); the United Nations Development Fund for Women (UNIFEM, now the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)); the Food and Agriculture Organization (FAO); the United Nations Industrial Development Organization (UNIDO), UNDP and WFP.

7. In Maputo, the Special Rapporteur had extensive consultations with other stakeholders, including civil society and community-based organizations; grass-roots leaders from different sectors of the population; representatives of the donor community; the Mozambican Bar Association (OAM); professional and elected judges; lawyers; prosecutors; magistrates; legal technicians; researchers and academics so as to obtain the

most complete and balanced vision of the situation of the judiciary in the country. She visited the Maximum Security Prison and the headquarters of IPAJ.

8. The Special Rapporteur wishes to express her appreciation to the Government for its cooperation in the exercise of her mandate. She also expresses appreciation to all stakeholders and interlocutors for their cooperation and time. She hopes to continue engaging them in dialogue and cooperation on all issues related to her mandate.

9. The last three days of the Special Rapporteur's visit in September 2010 coincided with major public disturbances related to significant increases in the prices of some basic products. The disturbances resulted in an estimated 10 deaths and approximately 149 people injured, according to information provided by the Mozambican Police. The Special Rapporteur deeply regrets the loss of human life during these events. Given the detrimental impact of this highly volatile situation on her programme of work, she left the country, and returned, at the invitation of the Government, in December 2010.

10. This report presents the major findings of the totality of the mission and concludes with some recommendations for strengthening the judicial system.

## **II. General background**

### **A. General political and socio-economic background**

11. Following centuries of colonialism, Mozambique gained independence from Portugal in 1975. A prolonged civil war (1977-1992) thereafter hampered Mozambique's capacity to bring about sustainable development and adequate socio-economic conditions for its population. In 2003, the World Bank estimated that 55.2 per cent of the population was below the poverty line. The 2009 Human Development report ranked Mozambique 172nd (out of 182 countries) for economy and inequality and estimated Mozambique's human development index at below 0.500.

12. The Constitution defines Mozambique as an independent, sovereign and democratic State of social justice (art. 1); governed by the rule of law; based on pluralism of expression and democratic political organization and on the respect for, and guarantee of, fundamental human rights and freedoms (art. 3). Mozambique is a State with a decentralized administration. It is divided into 10 provinces, 128 districts and 43 municipalities, including Maputo. The Constitution was revised on 16 November 2004 by the Assembly of the Republic.

13. The current President of Mozambique came into power in 2005 and was re-elected in 2009 for a second term from the beginning of 2010. Mozambique is a young democracy with a strong one-party tradition. The Front for the Liberation of Mozambique (FRELIMO) is currently in power. Other political parties include the Mozambican National Resistance (RENAMO); the Democratic Movement of Mozambique (MDM) and several smaller political parties. According to the Population Census of 2007, Mozambique has a population of 21,397,000. Information available at the United Nations Population Division indicates that the total population of Mozambique amounted to 22,894,000 in 2009.

14. Mozambique is a multilingual State. Information received indicates that Portuguese is spoken by approximately 40 per cent of the population. Other local languages spoken in Mozambique include three main groups of similar languages: the Macua/Lomue group, in the North of the country; the Sena/Ndau group in the central region and the Tsonga group in the South.

## **B. International and regional framework**

15. Mozambique has been a member of the United Nations since 1975. The State has ratified a number of major international human rights instruments<sup>1</sup> and is a party to the United Nations Convention against Transnational Organized Crime (UNTOC) (ratified on 11 December 2002) and the United Nations Convention against Corruption (ratified on 26 December 2006), which contain provisions requiring or encouraging measures of protection for witnesses of offences sanctioned under those treaties.

16. Mozambique is one of the founding members of the African Union. On 2 August 2006 it became a party to the 2006 African Union Convention on Preventing and Combating Corruption. It has ratified major legal instruments adopted within the framework of the African Union, including the African Charter on Human and Peoples' Rights and the Protocols thereto on the Rights of Women in Africa and the Court of Justice of the African Union.

## **C. The country's legal and policy framework**

17. The Constitution is considered the superior norm (Constitution, art. 2 (4)). It provides that approved and ratified international treaties enter into force once they are officially published (art. 18 (1)). They then have the same legal force as legislative acts of the Assembly of the Republic and the Government (art. 18 (2)). The independence of the judiciary; the separation and interdependence of powers; the right of access to justice and the rights to effective judicial protection and equality before the courts, are explicitly recognized by the Constitution of Mozambique.

18. The legal framework includes the Law of the Organization of the Judiciary (Law 24/2007 of 20 August 2007); the Magistrates' Statute (Law 10/92 of 30 July 1992); the Regulations for Judicial Inspection (resolution 6/CSMJ/P/95 of 20 November 1995) and merit assessment systems for judges (resolution 8/CSMJ/P/2001 of 12 December 2001); the Correctional System (Decree 7/2006 and Ministerial Diploma No. 43/2003) and the Code of Court fees (Decree 48/89, modified by Decree 14/96).

19. The policy framework regulating the administration of justice and the judiciary includes several national policies. Agenda 2025 is a long-term policy that sets out the vision, strategies and national priorities of Mozambique to be achieved by 2025. Mid-term policies regulating the administration of justice include the Five-Year Government Plan, which establishes the priorities for democratic governance for the period 2010-2014.

20. Short-term policies include the Economic and Social Plan for 2010, which seeks to operationalize economic and social objectives in line with the Medium Term Fiscal Scenario (2010-2012). In 2002, the Government adopted the Integrated Strategic Plan for the Justice Sector, which delineates Mozambique's strategic vision for the justice sector. This plan was complemented by the Justice Sector component of the Five-Year Government Plan (2010-2014).

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<sup>1</sup> A/HRC/WG.6/10/MOZ/2.

## **D. The independence of the judiciary**

### **1. The administration and oversight of the judiciary**

21. The Higher Judicial Magistrates' Council (CSMJ) is the organ responsible for the management and discipline of the judiciary in accordance with the Constitution and other laws.<sup>2</sup> It supervises and regulates the corps of judicial magistrates and court officials and is mandated, *inter alia*, to nominate, appoint, transfer, promote, exonerate and evaluate professional merit; take disciplinary action and, in general, carry out all acts of a similar nature in relation to members of the judiciary; evaluate professional merit and take disciplinary action in relation to officers of justice, without prejudice to the disciplinary powers assigned to judges; propose extraordinary inspections, inquiries and investigations to the courts; give opinions and make recommendations on the policy of the judiciary, at its own initiative or at the request of the President of the Republic, the President of the Assembly of the Republic or the Government.

22. CSMJ is composed of 16 members, which include the President and Vice-President of the Supreme Court (both of whom are nominated by the President of the Republic); two members appointed by the President of the Republic; five members elected by the Assembly of the Republic, according to principles of proportional representation; and seven members of the judiciary in different categories, all of whom shall be elected by their peers under the terms of the Magistrates' Statute.

23. During her visit, the Special Rapporteur observed that CSMJ has found it difficult to exercise its mandate in an effective and independent manner, due to a number of factors: it is understaffed and has not adopted internal statutes governing its functioning, thus leaving its effective control in the hands of its President, who is also the President of the Supreme Court. CSMJ should undertake planning processes, including determining staffing and budgeting needs. It should also publish its activities. In the Special Rapporteur's view, these factors, together with the nomination process of its members, seriously undermine the functioning of CSMJ, which is crucial to ensuring the independence of the judiciary.

### **2. Judicial budget**

24. Budget allocations are used in some instances to undermine the independence of the judiciary. Several interlocutors inquired how judges and prosecutors could carry out their mandates independently and impartially, when the same judges and prosecutors often need to negotiate the budget for their respective offices. The possibility of making concessions to obtain suitable budget allocations was mentioned.

25. In accordance with the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adequate resources to enable the judiciary to properly perform its functions must be assigned. The judiciary must actively participate in drafting its own budget, in cooperation with the Ministries of Finances and Justice. The judiciary must have the recognized right to participate in deliberations on its budget in the legislature. Budgetary allocations to fund the courts in the current fiscal year, or in the next financial year, may be reduced solely with the consent of the judiciary, or of an independent body representing it. Adequate safeguards should be established in this regard.

26. Entrusting the administration of its funds directly to the judiciary, or to an independent body responsible for the judiciary, may reinforce its independence and help to

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<sup>2</sup> See Constitution of Mozambique, arts. 220-222, and law on the organization of the administration of justice.

prevent financial dependency, as well as avoid tensions between the judicial and other branches of power.

### **3. Court fees, judicial salaries, allowances and remuneration**

27. The Special Rapporteur was informed about the general perception of lack of clarity on the calculation of court fees and of the absence of oversight mechanisms to ensure accountability for the management and destination of the income resulting from the collection of such court fees. She was also informed about an alleged margin of discretion, which allows magistrates and judges to decide on the imposition of court fees, as a percentage of such fees are emoluments added to the salaries of judges and court officials.

28. The system of emoluments emanating from court fees creates inequality among judges who follow judicial careers in criminal matters, as criminal tribunals and judges working on criminal affairs are excluded from benefits enjoyed by civil and labour judges, for example. The system of emoluments also constitutes a strong disincentive for court officials in criminal tribunals, as the general budget of the tribunals, which includes the salaries of court officials, increases proportionally to the income resulting from court fees.

29. Determining with more objectivity and equality the salaries and allowances of judicial officers and the remuneration of magistrates is of high importance. The system of emoluments based on court fees appears to conflict with the right to equal pay for work of equal value. Furthermore, the Special Rapporteur received allegations of lack of transparency and accountability concerning the management of the income resulting from court fees and justice taxes.

### **4. The assignment of court cases**

30. During her visit, the Special Rapporteur was informed of practices of allocation of court cases which hampered the independence of judges. It was alleged that the assignment of cases was at the discretion of the court Chair, and that the adjudication of cases disregarded jurisdictional competence (*ratione materiae, loci and personae*).

31. In her view, a method for assigning cases within the judiciary should be established in line with the Basic Principles on the Independence of the judiciary (“the Basic Principles”). Such assignments are an internal matter of judicial administration that should be free from internal and external interference. The use of mechanisms that allow the objective allocation of court cases, such as drawing of lots, systems for automatic distribution by alphabetical order, or pre-determined court management plans incorporating objective criteria, may contribute to preventing instances of manipulation and therefore to increasing the independence and transparency of the judicial system.

### **5. Other factors impacting the independence of the judiciary**

32. The Special Rapporteur heard from many stakeholders that the concentration of powers in the President of the Republic is a major factor having a detrimental impact on the independence of the judiciary. The Constitution contains provisions granting to the President of the Republic powers to, *inter alia*: dissolve the Assembly of the Republic (art. 188.1); appoint the President of the Supreme Court (which is also the President of the Higher Judicial Magistrates Council), the President of the Constitutional Council, the President of the Administrative Court and the Vice-President of the Supreme Court (art. 159 (g)); appoint, exonerate and dismiss the Prime Minister (art. 160.1(b)); appoint, exonerate and dismiss the Ministers and Deputy Ministers; the Provincial Governors; the principles and vice-principles of State universities and the Secretaries of State (art. 160.2) as well as the Attorney-General of the Republic and the Deputy Attorney General of the Republic (art. 159 (h)).



33. Many stakeholders are concerned about “the natural and unwritten loyalty” that high-ranking officials may consider they owe to those who nominated them and hold the power to dismiss them without justification. This concern is exacerbated by the unclear distinction between the powers and prerogatives of the Government and those of FRELIMO (the political party headed by the President of the Republic).

34. A number of controversial cases, some of which are awaiting a final decision by the Supreme Court, illustrate major concerns raised regarding the independence of the judiciary when FRELIMO is involved. An illustrative case relates to the dispute between the Beira Municipality and FRELIMO over the office space occupied by the Municipality.

35. Without entering into the substance of the case, steps have to be taken to prevent and sanction any possible interference by political parties in the judiciary. CSMJ has an important role to play in this regard, particularly in monitoring the conduct of judicial officials and advocating for the adoption of a code of conduct for magistrates, judges and other judicial officers proscribing their participation in political activities.

36. Thorough and prompt independent and impartial investigations should be conducted into all allegations of interference in judicial affairs and perpetrators should be prosecuted and punished. Such investigations are a crucial element to prevent the reoccurrence of further interference and to detect systemic problems hampering the independence of the judiciary. The independence of judges requires that appropriate structures and conditions be put in place to avoid the overturn of judgments by higher judicial bodies including a sanction on the lower-level judges who made the rulings, as this would result in a lessening of the independence of individual judges.

37. In this regard, the Special Rapporteur encourages the Central Office for Combating Corruption, which is crucial to the current efforts to build a culture of accountability in Mozambique, to redouble its efforts to investigate and bring to justice persons found guilty of corruption.

### **III. Access to justice**

#### **A. The recognition of equal access to the courts and the provision of legal assistance and representation**

38. The Constitution recognizes the right of all persons to have access to the courts. This recognition reinforces the guarantees related to the due process of law, namely the presumption of innocence; the right to defence and to be assisted by counsel; the right to prior and detailed notice of the charges; the right to appeal a judgment before a higher court and the prohibition of double jeopardy. This also helps to reinforce the protection of the fundamental rights to liberty and to security (art. 59); fair trial guarantees (arts. 59 and 70) and the right to equality before the courts (art. 70).

39. The Constitution recognizes the importance of, and the need for, mechanisms to facilitate free legal assistance, in both criminal and civil cases, for persons who, for economic reasons, are unable to engage their own defence attorney (art. 62).

40. In order to provide legal aid and services for those who cannot access justice for financial reasons, the Government established IPAJ<sup>3</sup> as a public agency. Services provided

<sup>3</sup> The main legal instruments governing the provision of legal aid and services in Mozambique are: Law 6/94 (creating IPAJ); Decree No. 54/95 (organizing IPAJ).

by IPAJ include three main components: general legal consultation for the public at IPAJ offices; representation of clients at courts; and representation of clients at police stations and PIC offices.

41. In order to benefit from IPAJ representation services, potential clients are required to present a declaration of poverty (*atestado de pobreza*), issued by the City Council. If eligible, the client's case is assigned to an IPAJ officer and is handled free of charge.

42. IPAJ officers are either legal technicians or legal assistants and therefore have a limited jurisdiction for representation of their clients (see section V on the legal profession). Only legal technicians and legal assistants who are members of IPAJ may provide legal aid services.

43. The Special Rapporteur commends the important work undertaken by IPAJ and encourages it to develop oversight mechanisms for ethics and discipline and to make its technicians and legal assistants accountable, as required.

44. Despite progress made, IPAJ has yet to achieve effective representation throughout the Mozambican territory. Information updated to the first trimester of 2010 indicates that IPAJ has covered the 10 provinces of Mozambique and is functional in 109 (out of 128) districts, with established offices in 89 districts and 20 itinerant offices in the others. In some instances, inmates have had to rely on ad hoc legal representation, provided by persons without any type of legal training; in others, people with financial means were unduly benefiting from IPAJ legal services.

## **B Knowledge barriers**

45. Making justice accessible to all starts with an adequate knowledge of human rights and fundamental freedoms, and the functions and services provided by the system of administration of justice.

46. Despite some efforts to raise awareness on human rights, fundamental freedoms, democracy and rule of law by the Government and other stakeholders with the assistance of the international community, the majority of the population do not know about the functioning of the administration of justice in Mozambique; the role of the judiciary; the importance of the principle of separation of powers; the distinction between the role of the Government and that of the political party to which those in power belong; the importance of an independent judiciary, and of an independent body to oversee and manage the judiciary. Addressing knowledge barriers to the access to justice and to understanding the functioning of the justice sector is of paramount importance, given the prevalence of the *ignorantia juris non excusat* principle within the legal system. Furthermore, the large backlog of cases encourages people to seek alternatives to formal justice mechanisms.

## **C. Financial barriers**

47. Financial barriers to access to justice include court fees and the high cost of both legal advice and legal representation. Court fees in Mozambique are regulated by the Code of Court Costs,<sup>4</sup> and are due at different stages of legal proceedings. Court fees also include a number of taxes.

48. Information received indicated at least five different instances where fees are to be paid by users of the justice system: an "initial fixed fee" and the justice tax (*imposto de*

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<sup>4</sup> Decree No. 48/89, updated by Decree No. 14/96.

*justiça*), both of which are compulsory to start legal proceedings; a “defence fee” to ensure that the principle of equality of arms is observed; a “processing fee” to cover the costs of preparing the case for submission; and an “additional processing fee” to cover notifications and postage costs, if applicable.

49. The Special Rapporteur notes with concern the imposition of penalties on the ground of non-payment of court fees. In criminal matters, it has entailed in some instances de facto indefinite detention, despite the fact that the law does not allow detention to be extended as a consequence of the lack of payment of court fees. Information received indicates that the exemption of payment of court fees to those with proven indigent status (*atestado de pobreza*) only applies for the initial fixed fee.

#### **D. Other barriers**

50. Discrimination in the right to access justice is felt most acutely by those segments of the population which are already in vulnerable situations owing to factors such as geographical location, poverty, gender, age, administrative situation, immigration, indigenous or minority status and disability. The supply of services may not be discriminatory but the demand is unequal.

51. Difficulties encountered with accessing justice on the ground of a person’s administrative situation, including immigration status, are of particular concern to the Special Rapporteur, who was informed that asylum-seekers and migrants are often deprived of their right to access to justice. Although asylum-seekers receive support for six months while the determination of their status is pending, in practice these procedures last up to three years. As a result, asylum-seekers are left undocumented and without any type of financial, social or psychological support. In this regard, the Special Rapporteur wishes to recall that access to justice is crucial for asylum-seekers in order to uphold their human rights, including the principle of non-refoulement.

52. The Special Rapporteur was also informed of a large percentage of Mozambicans lacking any type of identification, and the excessive cost that the population has to bear to obtain such identification, given the conditions of poverty prevailing in most of the country (170 meticaïs per adult and 90 meticaïs per child (approximately five and three US\$ respectively)). Information received suggested that 70 per cent of the population is yet to be registered and issued with an identification document. In 2008, an estimated 51 per cent of all children under the age of 18 in Mozambique were yet to be registered.<sup>5</sup>

53. The Special Rapporteur is concerned about the lack of cultural sensitivity and language assistance to ensure the right to access to courts. Mozambique has 18 national languages and at least 60 other derived languages. Approximately 40 per cent of the population speaks Portuguese. Although article 98 of the Code of Criminal Procedure requires courts to appoint an interpreter for non-Portuguese-speakers, there are still many challenges to overcome in this regard. Translation services are not usually provided by the courts and are ad hoc or provided through informal arrangements.

54. The lack of infrastructure and large geographic distances are also obstacles to both the speed of judicial proceedings, and the physical access to justice by the majority of the

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<sup>5</sup> Universal Periodic Review-Human Rights Council, UNICEF Inputs-Mozambique, p. 4. Available from:  
[http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MZ/UNICEF\\_United%20Nations%20Children's%20Fund\\_eng.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MZ/UNICEF_United%20Nations%20Children's%20Fund_eng.pdf)

population. Transportation expenses for court attendance were reported to be an insurmountable burden for most citizens.

## **IV. The court system**

55. The Constitution recognizes three main categories of tribunals: the Supreme Court, the administrative tribunal and the judicial tribunals, whose general characteristics are presented below.

### **A. The Supreme Court of Justice**

56. The Supreme Court is the supreme judicial body exercising general jurisdiction. It is entrusted with ensuring the uniform application of the law and adequate administration of justice. Based in Maputo, it is composed of professional and elected judges<sup>6</sup> appointed for an initial five-year term, with the possibility of successive reappointments.

57. The Supreme Court is currently composed of five professional judges (instead of a minimum of seven as provided by the Law of Judicial Organization of 2007)<sup>7</sup> and 17 elected judges (including eight alternate judges). Those judges are appointed by the President of the Republic on the basis of a list proposed by CSMJ, after public tender and curriculum evaluation.

58. The lack of human resources has made it impossible for the Supreme Court to cope with its workload. Several stakeholders mentioned to the Special Rapporteur excessive delays in deciding cases and often referred to this as a “graveyard of cases”.

### **B. The Administrative Court**

59. The Administrative Court<sup>8</sup> is the highest body in the hierarchy of administrative, customs and fiscal courts. It controls the legality of administrative acts and application of rules and regulations issued by the Public Administration.<sup>9</sup> It also scrutinizes public expenditure, the enforcement of liability for financial offences and supervises the implementation of the State Budget, together with the Assembly of the Republic. It is composed of nine judges of appeal and the presiding judge (instead of 12 as stipulated by the Law). The administrative court is autonomous and is not a part of the judicial system.

### **C. The courts of justice**

60. The courts of justice have a common jurisdiction in civil and criminal matters and exercise their jurisdiction over all areas not assigned to other jurisdictions, according to constitutional provisions.<sup>10</sup> The general system of the courts of justice consists of community tribunals; provincial and district tribunals; other specialized tribunals and superior tribunals of appeal.

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<sup>6</sup> Law No. 24/2007, art. 42, Constitution of Mozambique 2004, art. 226.

<sup>7</sup> See Law No. 24/2007, art. 42 (2).

<sup>8</sup> The Administrative Court is governed by articles 131; 159 (g); 179 (2) (h) and 228-231 of the Constitution of Mozambique.

<sup>9</sup> Constitution of Mozambique, art. 228 (1).

<sup>10</sup> *Ibid.*, art. 223 (2) and (4).

## 1. Community tribunals

61. Community tribunals<sup>11</sup> are non-judicial mechanisms for settling conflicts in application of the principle of equity and on the grounds of the social and cultural values of Mozambican society. They do not belong, strictly speaking, to the judicial system of Mozambique. However, their functions are analogous to those of courts of common jurisdiction. Appeals to community tribunals' decisions are decided primarily by provincial or district courts. Criminal matters are outside the jurisdiction of traditional and customary tribunals.

62. Community tribunals are linked with the formal justice system through referrals and appeals. The Government has undertaken various efforts to harmonize customary law applied in community tribunals and the formal justice system.

63. In the Special Rapporteur's view, while strengthening traditional and customary justice will certainly provide meaningful access to justice, the justice sector should not rely exclusively on these courts to ensure access to justice by specific demographic and socio-economic groups. These groups typically rely upon community tribunals by reasons of proximity, low cost, tradition, political affiliation, barriers to accessing the formal system and pressure from social settings.

## 2. District and provincial tribunals

64. District tribunals act as courts of first instance in nearly 100 out of a total of 128 districts. Provincial tribunals are specialized in civil, criminal and labour matters. They act as courts of first instance at the provincial level and as courts of appeal for district tribunals in each of the 10 provinces and in the city of Maputo. Provincial tribunals are headed by a clerk of court and may be composed of one or more judges.

65. As a court of first instance, on civil matters, the provincial tribunal takes cognizance of cases that do not fall within the competence of other courts. They take cognizance and decide on claims for damages and losses caused by judges in lower courts and Public Ministry agents in the exercise of their functions. As a court of first instance, on criminal matters, the provincial tribunal: adjudicates criminal offences that should not be cognized by other courts; and takes cognizance of criminal proceedings in which professional judges of district Courts and Public Ministry agents are accused.

66. As a court of second instance, the provincial tribunal: takes cognizance of appeals to district courts' decisions, conflicts of jurisdiction between district courts, and habeas corpus applications in accordance with the rules of procedure. It also adjudicates appeals against decisions by courts of arbitration or other conflict mediation organs.

## 3. Other specialized courts

67. The Constitution mentions the establishment of specialized courts (administrative court, fiscal courts, the Customs Court, the Maritime Courts, arbitration courts). This constitutional provision is yet to be implemented, as only one customs court has been operational since 2002 in the capital, Maputo. Provincial courts include an operational labour section but labour courts are yet to be established due to resource constraints.

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<sup>11</sup> The creation of community courts is mentioned in the Constitution of Mozambique, article 223 (2), and developed by Law 6/92.

68. The Constitution mentions that martial courts may only be established at time of war to try military and police personnel.<sup>12</sup> In practice, they are generally judged by common non-military jurisdictions.

69. Juvenile courts are set up to try children under 16 years of age involved in criminal cases and to address parenting disputes and issues involving dependents. Currently, there is only one functional juvenile court in the city of Maputo.

#### **4. Superior Tribunals of Appeal**

70. The Superior Tribunals of Appeal,<sup>13</sup> organized in general sections or sometimes in specialized sections, act as courts of first and second instance. They were established to assist the Supreme Tribunal to cope with the backlog of cases. The appointment of judges for the Superior Tribunal of Appeal (called *desembargadores*) is still pending, although 29 such judges have already been nominated.

71. The responsibilities of the superior tribunals of appeal, as courts of first instance, include: to adjudicate criminal proceedings against elected judges of provincial courts, professional judges of provincial courts and Public Ministry agents for acts related to the exercise of their functions; take cognizance and decide on claims for damages caused by professional judges of provincial courts and Public Ministry judges for acts related to the exercise of their functions; take cognizance of habeas corpus applications; and exercise any other functions provided at law.

72. As courts of second instance, the superior tribunals of appeal are responsible for the adjudication of the appeals of provincial courts' decisions under procedural laws; conflicts of jurisdiction between judicial courts and other entities within their jurisdiction; conflicts of jurisdiction between provincial courts within their jurisdiction; and exercising any other functions provided by the law.

#### **D. The courts' management and fiscal control**

73. The Special Rapporteur wishes to draw attention to the importance of a court registry or a court clerk to manage non-judicial aspects of the courts' administration, such as the receipt, filing and safekeeping of documents to ensure smooth information flow, while preventing the disclosure of documents, personal data and other sensitive information, except when authorized by law or court order. Regular auditing of records is essential to ensure integrity and accountability. Audits could be strengthened, *inter alia*, through training to prevent malfeasance.

74. Management of court records (i.e. case information, summaries of court proceedings, verdicts, docket entries indicating the receipt of files) should be strengthened, as these are not automated in Mozambique. The Special Rapporteur encourages the international community to provide technical assistance and support to Mozambique to undertake a thorough assessment of information management needs, including a possible automation plan for the justice sector, which requires the strengthening of human and financial resources and technical and audit capacity.

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<sup>12</sup> Constitution of Mozambique, art. 224.

<sup>13</sup> Law 24/2007, arts. 58-67.

## V. The legal profession

### A. Legal education

75. Legal education in Mozambique began in 1975 with the opening of the Law Faculty of the Lourenço Marquez University.<sup>14</sup> As private legal practice was forbidden at that time, legal education was centred in public law. From 1983 to 1987, the Faculty of Law was closed. Once reopened, it remained the sole institution providing legal education in the country until 1996. Legal studies are currently taught in public and private universities. There is no centralized curriculum and the principles of academic freedom and professorial autonomy are upheld.

76. In Mozambique, a law degree is obtained following four years of university studies, and a mandatory internship, consisting of a probationary period of technical and legal practice. Internships also include legal aid practice to indigents, with wages paid by the State. Stakeholders drew the Special Rapporteur's attention to financial constraints as a common obstacle to the successful completion of the internship conducive to obtaining the title of lawyer, as there is no legislation that guarantees budget allocation to paid interns. After a successful internship, candidates are admitted to pass a practical examination to receive the professional title.

77. The Special Rapporteur is concerned about the current disagreements between OAM and IPAJ in connection with the content and modalities of the internship, and invites both institutions to explore avenues for cooperation and partnership with a view to building a stronger legal profession in Mozambique.

### B. The organization of the legal profession

78. Shortly after independence, private legal practice was made illegal in Mozambique. In 1986, the need for an organized system of legal representation became increasingly apparent and the National Institute for Legal Aid (INAJ) was established to channel the provision of all legal services. The 1990 Constitution and the reorientation of the economy allowed the recognition of a modern bar association, OAM, established by Law No. 7/94.<sup>15</sup>

79. The Special Rapporteur welcomes these developments, which are in accordance with international standards.<sup>16</sup> She wishes to underscore the importance of an organized legal profession, including an independent and self-regulated association to safeguard the professional interests of lawyers, while protecting and strengthening ethics and the integrity and independence of the legal profession. She invites the international and regional community to explore ways of cooperating with OAM so that it can implement its Strategic Plan 2009-2014 and continue performing its important functions.

### C. Other categories of officials related to the legal profession

80. To fill the shortage of lawyers in the country, IPAJ has promoted, and in some instances trained, other categories of officials (who are not accredited by OAM) to provide

<sup>14</sup> Since 1976 Lourenço Marques University has been called Eduardo Mondlane University.

<sup>15</sup> Law no. 28/2009 is the new statute of OAM.

<sup>16</sup> See principles 23 and 25 of the Basic Principles on the Role of Lawyers. See also Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, section A.

legal services. These officials are legal technicians and legal assistants. There is a separate category of officials related to the legal profession known as paralegals.

#### **1. Legal technicians and legal assistants**

81. Information provided by the Government indicates that legal technicians are persons admitted to IPAJ who have a Bachelor of Laws degree or have attended three years (or at least two years, according to other sources) in a law faculty and concluded all legal proceedings courses. Legal assistants are persons who have undertaken special training (not necessarily legal education) provided by the Ministry of Justice. They are assigned to police stations, prisons, associations, courts and the PIC Office. They may practise before courts in a similar way to a lawyer admitted to the Bar, but only in areas where the number of lawyers is insufficient.

82. OAM determines whether the number of lawyers in any given place is sufficient. In criminal cases and outside the capital (and even in district tribunals on the periphery of Maputo), clients in court are almost exclusively represented by legal technicians and legal assistants.

83. IPAJ is an agency subordinated to the Ministry of Justice and its members (legal technicians and legal assistants) are civil servants, paid from the general State budget funds. However, in practice, not all members have a formal contractual relationship with IPAJ, and some do not receive any salary from the State budget. This is the case for law students undertaking their legal clinic at IPAJ, and who have therefore been certified by this body.

#### **2. Paralegals**

84. Due to the lack of lawyers and legal professionals, an increasing number of citizens rely on legal aid provided by representatives of civil society organizations accredited by IPAJ as paralegals. These individuals do not have law degrees, and possess only a basic knowledge of law to mediate daily conflicts in communities. Among the organizations providing legal assistance are the Mozambican Human Rights League (LDH) and the Women's Association for Law and Development (MULEIDE). While the Special Rapporteur welcomes the important contribution made by civil society in providing legal aid, she notes that it is necessary to have a clear definition of paralegals and of their level of instruction in order to preserve a harmonious application of the law.

### **D. Capacity-building of legal professionals and other categories of officials related to the legal profession**

85. According to both the Basic Principles and the Regional Standards for Africa,<sup>17</sup> appropriate training is one of the preconditions for selection for judicial office. In this connection, the Special Rapporteur notes with satisfaction the existence of CFJJ, which comes under the Ministry of Justice. It was created in 1997 to train legal professionals; manage a legal and judicial documentation centre; publish scholarly work; and promote legal research.<sup>18</sup> Since its inception, the CFJJ has trained approximately 115 new court staff, including 52 women, constituting 44.8 per cent of the total trainee population.

86. The Special Rapporteur encourages the Government to continue to strengthen this programme, keeping the balance between the quality of the courses and their duration. She notes with appreciation that it has inspired developments beyond Mozambique, notably in

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<sup>17</sup> Principles and guidelines in Africa, A 4 (i) and (k).

<sup>18</sup> See Decree No. 34/1997, art. 2, of 21 October 1997.



other Portuguese-speaking countries. However, the Special Rapporteur notes with concern the current limitations to the functioning of CFJJ, including the apparent shortage of qualified applicants to participate in some of its general training courses. She welcomes the establishment of baselines and expected accomplishments at CFJJ, such as the 100-candidate project, and invites it to include both qualitative and quantitative performance evaluation indicators in its strategic management and planning efforts.

87. The Special Rapporteur wishes to underscore the importance of training at all stages of the judicial career, including pre-service and initial training, but also continuing learning opportunities for judges as a way to constantly increase their knowledge and build their capacity to resist internal and external influences. She praises the CFJJ provision of both general and specialized courses for legal professionals and encourages it, together with its cooperation partners, to study the possibility of further expanding its efforts at the provincial and district levels.

## **E. Lawyers**

88. With the exception of provinces where the number of lawyers is either insufficient or non-existent, the exercise of advocacy by legal professionals has been restricted to those registered with OAM. However, IPAJ will also be able to provide accreditation to lawyers, which could possibly lead to conflict with OAM.

89. Strict and clear admission procedures for mandatory membership are paramount to preserving the integrity of the legal profession and gaining credibility among the public and the relevant branches of government.

90. The Special Rapporteur was made aware of the shortage of qualified lawyers outside the capital: some provinces such as Gaza or Niassa did not have a resident advocate. Currently, only Maputo City, Maputo Province and Beira are considered to have sufficient lawyers.

91. The categories of legal professionals in Mozambique include judges, prosecutors and lawyers (see sections I, J and K).

## **F. Judges**

### **1. The selection and appointment of judges**

92. The Special Rapporteur wishes to draw attention to the disadvantages associated with judicial appointment procedures which rely heavily on political considerations. In some jurisdictions, judges are popularly elected, rather than appointed on the basis of merit. She wishes to insist on the importance of an appointment system based on a career of promotion and successful applications based on merit. Increased security of tenure helps to protect judges from outside pressures. Appropriate systems of selection, appointment and promotion, and disciplinary measures that are transparent, predictable and objective, are the best protection for achieving independence and impartiality.

93. Information received indicated that, in numerous cases, membership of the ruling party (in power since 1975) is a de facto prerequisite for access to public administration, including the judiciary, as well as for career advancement and job security. This situation and the lack of an effective system of checks and balances constitute considerable obstacles to the development of a truly independent judiciary.

## **2. Classification and promotion of judges**

94. Judges may be classified at the A, B, C and D levels at the district and provincial courts according to their seniority, with salary implications. Many judges highlighted that they considered that there was an environment of competition and inequality among them due to this classification and emphasized the need to establish mechanisms to ensure that classification corresponds to the actual level of their legal education and experience.

95. The Special Rapporteur also received information on instances where judicial decisions had a direct impact on the classification and promotion of judges, clearly undermining the independence of the judiciary. Also, a number of stakeholders alleged undue influence in the classification of judges and its detrimental implications for the independence and transparency of the judicial system.

96. However, the Special Rapporteur observes with appreciation efforts undertaken by the Government to ensure objective criteria for the classification and promotion of judges, such as the establishment of quality commissions for assessing the merits of judges to be promoted to magistrates.<sup>19</sup> She wishes to stress the importance of final decisions on promotions being taken by an independent body in charge of the process of promotion, composed of a majority of judges. While adequate professional experience is an essential prerequisite for promotion, it should not be the only factor taken into account in such decisions. In the Special Rapporteur's view, promotion, like initial selection and appointment, should continue to be merit-based, having due regard to integrity, qualification, ability and efficiency.

## **3. Tenure and removability of judges**

97. The Special Rapporteur welcomes the prominence given to the irremovability and irrevocability of judges by the Constitution (arts. 217 (3) and 218 (2)), which is one of the main pillars guaranteeing the independence of the judiciary. As only in exceptional circumstances may the principle of irremovability be transgressed, the Special Rapporteur wishes to recall the importance of laws providing detailed guidance on judicial malpractice triggering disciplinary measures, including the gravity of the misdeed, which determines the kind of disciplinary measure to be applied in the case at hand. Disciplinary measures to be adopted must be proportional to the gravity of the misdeed committed by the judge; hence a well-defined scheme of available disciplinary measures should be adopted.

98. The Special Rapporteur also wishes to highlight the importance of the existence of an independent body or mechanism with responsibility for disciplining judges through a procedure in compliance with due process and fair trial guarantees, including guaranteeing an independent review of the decision. Temporary or provisional judges, when they exist, must have the same guarantees as those with a life or fixed-term tenure, given that they perform similar judicial tasks. The discretionary dismissal of temporary judges puts the independence of the judiciary at stake.

## **4. Immunity of judges**

99. The Basic Principles stipulate that judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions. According to the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, judicial officers shall not be criminally liable for such acts or omissions. The Constitution states that "judges may be held responsible in civil, criminal,

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<sup>19</sup> See High Council of the Judiciary, resolution 8/CSMJ/P/2001, art. 1.

and disciplinary proceedings for acts committed in the discharge of their duties only in cases specified by law” (art. 218 (1)).

100. In order to protect judges from unwarranted prosecution, the Special Rapporteur considers it essential that judges be granted criminal immunity, with exceptions clearly determined by law.

## **G. Prosecutors**

101. The Public Prosecution Service is hierarchically subordinate to the Attorney-General of the Republic. It represents the State and defends such interests as the law may determine. Prosecutors enjoy their own statute and autonomy. They are charged by the Constitution with the control of the legality and duration of the detention. They also conduct criminal proceedings, exercise penal authority, and provide legal defence of minors and absent persons.

102. The Office of the Attorney-General (headed by the Attorney-General and composed of his deputy and a group of Assistant Attorneys-General) is based in Maputo. The Constitution provides that the Attorney-General should report annually to the Parliament, and is accountable to the Head of State. The Assistant Attorneys-General are responsible for representing the Public Prosecution Service in the Supreme and Administrative Courts. Whilst Assistant Attorneys-Generals are present in all provincial courts, a number of district courts are yet to be provided with prosecution services.

103. The Special Rapporteur wishes to draw attention to the need to strengthen the independence of the Office of the Attorney-General, including reviewing the constitutional provision on nomination and dismissal (art. 239) and ensuring its financial autonomy.

## **VI. Other aspects of the administration of justice**

104. The administration, management and appropriate functioning of the justice system involves different institutions, some directly related to major goals in the justice sector, such as ensuring access to justice and legal aid for all. Some of the key institutions that have not yet been mentioned in this report are the Constitutional Council,<sup>20</sup> the Ministry of Interior,<sup>21</sup> the Ministry of Justice<sup>22</sup> and the Parliament, in particular its Commission on Petitions. The National Human Rights Commission of Mozambique, which is being established (Law 33/2009), has the potential to contribute to an effective and independent national system of administration of justice.

<sup>20</sup> The Constitutional Council, created in 2004 (art. 241 of the Constitution) determines the constitutionality of legal acts and norms.

<sup>21</sup> The Ministry of Interior is responsible for policing, national security and immigration affairs. It manages the police forces, including PIC. It therefore plays an important role in the administration of justice, particularly regarding the correctional system. It is mainly governed by Presidential Decree No. 18/2000 (establishing its attributions and competences); Ministerial Diploma No. 68/2001 (estatuto orgânico)

<sup>22</sup> The Ministry of Justice is responsible for managing the justice sector. It provides technical advice to the Government, including for law and policymaking. It is also charged with, inter alia, supervising the correctional system; ensuring the quality of the legal profession and ensuring the right to a legal defence. It is governed, inter alia, by Presidential Decree No. 5/95 (defining its objectives and functions); Ministerial Diploma No. 201/2004 (establishing its internal regulations); Ministerial Diploma No. 43/2003 (unifying the correctional system); and Decree No. 7/2006 (organizing the correctional system).

105. In this regard, the Special Rapporteur commends efforts undertaken by the Government to ensure adequate coordination among the various governmental actors involved in the administration of justice. She welcomes the establishment of courthouse complexes (*palácios de justiça*), which illustrates the steps taken to ensure better coordination between tribunals, prosecutors, IPAJ and PIC, and to speed up judicial proceedings and facilitate access to justice for all.

106. The Coordinating Council for Legality and Justice (CCLJ) informally functions at national, provincial and district levels. Composed of representatives of the relevant Government ministries, the Prosecutor-General and the courts, it was established in 2001 but was declared unconstitutional by the Constitutional Council for lack of compliance with the principle of separation of powers. However, it is informally functioning at the provincial and district levels, meeting monthly to exchange views and evaluate the conduct of business. The Special Rapporteur encourages the establishment of a systematic dialogue between the various organs responsible for ensuring the effective delivery of justice in Mozambique. In Nampula and Beira, she was informed about the positive impact that efforts of coordination and cooperation among justice sector institutions have had on the ground.

107. Many institutional challenges remain which relate to the effective administration of justice. The Supreme Court has been partially operating for several years without the minimum number of judges required by law. The Special Rapporteur urges the Government to take all necessary steps to nominate judges for the Supreme Court so that it can start to address its backlog. It urges the Government to create the conditions to enable the Superior Tribunals of Appeals and its judges to begin to perform their duties with efficiency and impartiality, as measures to address the severe congestion of appeals in the judicial system.

#### **A. The correctional system and fair trial guarantees**

108. Within the framework of earlier reforms, the National Service for Prisons (SNAPRI)<sup>23</sup> was established within the organizational structure of the Ministry of Justice to manage the correctional system. Headed by a General-Director appointed by the Prime Minister, its main responsibilities include supervising the management of prison establishments and the execution of security measures; the security and protection of the prison establishments; the execution of penalties; the promotion and management of employment contracts; and the design and implementation of draft policies and strategies oriented to prisoners' social reintegration.

109. During her visit, the Special Rapporteur heard allegations of lack of respect for the principle of the presumption of innocence, access to legal assistance and the right to a lawyer; prolonged and de facto indefinite detention; lengthy trials, the excessive use of preventive detention and the inadequate implementation of the principle of equality before the law. Slightly more than 30 per cent of detainees were in preventive detention, which is a figure close to that of many other countries worldwide. However, the specificity of Mozambique is that many detainees who may only have received minor sentences are currently in preventive detention.

110. The Government is aware of this and other pitfalls in the correctional system and has adopted a new integrated approach to improve conditions in detention facilities, including granting inmates access to justice. Revision of the legislation is under way. The draft legislation is almost complete and is to be submitted to the Council of Ministers and the

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<sup>23</sup> See Decree No. 7/2006.

Parliament in 2011. The new legislation should include the permanent presence of a minimum of one IPAJ member of staff per facility. Furthermore, correctional authorities should work to ensure that all consultations between lawyers or IPAJ officials and detainees are confidential. To guarantee the application of this constitutional right (art. 63.4), detention facilities should identify venues where such consultations could take place. The Ministry of Justice is also preparing new legislation to introduce alternatives to prison detention, with the support of UTREL and UNDP.

111. After her visit to the Maximum Security Prison in Maputo and her consultations with a wide variety of actors, it became clear to the Special Rapporteur that in order to expedite trials and avoid situations of unlawful detention, resources should be allocated to facilitate the transportation of detainees to and from courts and ensure the systematization of records on cases. Efforts to ensure the application of the principle of *nulla pœna sine lege* should also be redoubled. The Special Rapporteur wishes to invite the international community to accompany Mozambique in this important process, which entails the modernization and automation of the justice sector.

## B. Gender and the justice sector

112. The Special Rapporteur wishes to draw attention to cultural practices that may be detrimental to the human rights of women and in some instances of children, including in relation to their rights to access to justice and to an effective remedy. According to a number of stakeholders, women are at times prevented from resorting to legal avenues in cases of violence and divorce on the basis that their husbands must be informed or called to solve the problem. Other examples include practices that can make widows and orphaned children more vulnerable, such as those of mourning rituals for the “cleansing of the widow” (called *pita-kufa* or *kutxinga*) and those of depriving widows and orphan children of inheritance, practised for example in Zambezia and other provinces.

113. In light of the above, the Special Rapporteur recommends that efforts to disseminate laws aimed at, and mechanisms available for, the protection of women and children, including those related to specialized sections in the tribunals as well as measures against domestic and other types of gender and age-based violence, be redoubled. In this regard, she welcomes Law 29/09 against domestic violence as an important addition to the establishment of Cabinets on Violence against Women and Children, and encourages the Government to continue expanding their coverage and equipping them with adequate resources for the psychological, medical and legal support and assistance of victims.

114. The Special Rapporteur learned that there was a dearth of data on women’s representation in the legal profession and their participation in training and capacity-building efforts in the justice sector. This includes law schools and other institutions, which are yet to mainstream a gender approach. She also received information indicating that national legislation establishing gender quotas or the undertaking of parity reforms within the judiciary is not envisaged in the near future. However, she was pleased to learn that gender parity is effectively applied as a general rule for the selection and appointment of judges and that it is taken into consideration in the appointment of community judges in the district of Meconta.

## VII. Conclusions

115. **The Special Rapporteur recognizes the efforts carried out by Mozambique to develop judicial institutions that are independent and impartial. The challenge now at hand is the establishment of a fully independent judiciary, composed of independent**

magistrates and judges, assisted by impartial prosecutors and lawyers who may develop and exercise their profession in a totally independent and professional manner. Regarding the judiciary, the colonial heritage should be left behind as a modern and efficient judiciary becomes one of the components of a modern, democratic State governed by the rule of law.

116. The constitutional, legal and policy framework regulating the judiciary in Mozambique gives a prominent place to its independence and recognizes the principles of the separation of powers and supremacy of the rule of law. The independence and strengthening of the judiciary have been incorporated as objectives within the pillar on good governance in key documents for the country, such as Agenda 2025; the Five-Year Government Plan; the Plan for the Reduction of Extreme Poverty and the Economic and Social Plan.

117. Despite the encouraging constitutional, legal and policy framework, several obstacles remain to the institutional independence and impartiality of the judiciary.

## VIII. Recommendations

118. Based on her findings, and with a view to contributing to the development of an effective system of administration of justice that ensures independence, impartiality, integrity, equality and transparency, as a prerequisite for guaranteeing the enjoyment of human rights for all in Mozambique, the Special Rapporteur wishes to make the following recommendations:

(a) *Strengthening the independence of the judiciary*

119. The Government of Mozambique should redouble its efforts to uphold the independence of the judiciary and to that end, the Government should:

- (i) Consider undertaking constitutional and legal reforms aimed at strengthening the principles of the separation of powers and checks and balances, inter alia, by reducing the concentration of power in the hands of the President of the Republic and the role of the Executive organ in judicial affairs;
- (ii) As a way to address the need to make a clear distinction between the political party in power and the Executive and in order to avoid undue influence, including in judicial affairs, the Special Rapporteur recommends the adoption of a code of ethics for all civil servants (excluding those who are popularly elected), which should proscribe the holding of any office in a political organization and the soliciting of funds for, or the making of contributions to, a political organization or candidate, as well as a caution to refrain, whenever possible, from attending political gatherings and engaging in political activities;
- (iii) Create all the necessary conditions for the High Council of the Judiciary to be fully operational, facilitating the undertaking of planning processes, including budgeting and staffing needs, and establishing a system for the dissemination of its activities;
- (iv) Establish safeguards to ensure the budgetary allocations for the judiciary and the financial autonomy of the courts at all levels, the Office of the Attorney-General and IPAJ;

- (v) Consider reviewing the system of emoluments emanating from court fees and adopt mechanisms to allow the determination, with more objectivity and equality, of the salaries of judicial officials and the remuneration of magistrates. One such mechanism could be the adoption of pay scales for judicial officers and magistrates specifying the annual salary rate to which holders of a judicial office are entitled; the circumstances in which any adjustment of the salaries takes effect in respect of a financial year and the allowances to which judicial officers and magistrates are entitled;
- (vi) Consider establishing mechanisms to allocate court cases in an objective manner such as drawing of lots; systems for automatic allocation by alphabetical order; or predetermined court management plans incorporating objective criteria, and to monitor the adjudication of cases in accordance with the jurisdictional competence of tribunals (*ratione materiae, ratione loci and ratione personae*).

(b) *Access to justice and strengthening the legal profession*

120. The Special Rapporteur recommends that the Government of Mozambique, with the assistance of the international community:

- (i) Provide all required support to IPAJ to enable it to achieve effective representation throughout the territory and obtain the administrative and financial autonomy necessary for carrying out its functions with more efficiency;
- (ii) Provide free legal aid to asylum-seekers throughout the period taken to determine their status as refugees, including interpretation services; as well as forensic, psychological and medical services, as required;
- (iii) Undertake the necessary steps to provide Mozambicans with national identification cards to allow them to be fully recognized as persons before the law and to resort to the justice system, if necessary.
- (iv) Increase efforts to raise awareness on human rights and the rule of law, particularly on the justice administration system, the mechanisms available to seek legal redress, and the role of an independent judiciary.

(c) *Gender and the justice sector*

121. The Special Rapporteur recommends that the Government:

- (i) Continue expanding coverage of the cabinets on violence against women and children and equip them with technical and human resources, including psychological and social support and other care for victims;
- (ii) Provide gender- and age-specific training to police and other officials providing assistance to women and children in the above-mentioned cabinets and make available IPAJ representatives to provide the required legal advice for the victims, to allow them access to mechanisms of compensation and redress under employment legislation;
- (iii) Strengthen awareness programmes on the existence and services provided by the cabinets on violence against women and children, on the rights of both women and children and on the mechanisms available in the judicial system to seek redress and compensation for domestic and other types of violence.

(d) *Other recommendations*

122. **The Special Rapporteur encourages the international community, including the United Nations and the donor community, to continue assisting the Government of Mozambique to strengthen good governance and justice.**

123. **The Special Rapporteur encourages the Government of Mozambique to avail itself of the technical cooperation and assistance of the Special Rapporteur on the independence of judges and lawyers, the United Nations Office of the High Commissioner for Human Rights and the United Nations Office on Drugs and Crime to complement ongoing efforts to:**

- (i) **Assist in conducting a comprehensive assessment of the justice system to identify further areas of technical assistance and cooperation;**
  - (ii) **Assist agencies in the design of interventions (including capacity-building efforts) in the justice sector to integrate human rights standards and norms, particularly in the system of criminal justice;**
  - (iii) **Undertake a thorough joint assessment of information management needs, including a possible automation and modernization plan for the justice sector.**
-