



# Summary of the Submission to the UN Universal Periodic Review of Mozambique

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Right to Justice and Integrity of the Judicial System; Right to Land and Healthy Environment; Rights of Women and Children; Rights of Minorities and Vulnerable Groups (Persons with Disabilities, Persons living with HIV/AIDS and the Albinos); and Right to Effective Political Participation



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## Summary

1. This submission is based on primary data gathered through consultations, survey research, and interviews conducted with community members totaling 367, of whom 182 were men, and 185 women. The data collection process was carried out between April and August 2015 from four provinces in the North Region of Mozambique, including in Niassa, Cabo – Delgado, Nampula, and Zambezia. In Central Region, community input was received from three provinces: Manica, Tete, and Sofala. Finally, in the South Region, survey seminars were carried out in four provinces, including, in Inhambane, Gaza, Maputo province, and Maputo City. A total of 60 national and international non-governmental organizations contributed in the data generation process and the development of this report.
2. The report documents key findings and key recommendations relating, *inter alia* to the following issues: Right to justice and integrity of the judicial system; right to land and healthy environment; rights of women and children; rights of minorities and vulnerable groups (persons with disabilities, persons living with HIV/AIDS and the Albinos); and right to effective political participation.
3. Mozambique has, *inter alia*, ratified the Convention on the Rights of Persons with Disabilities (CRPD); acceded to the International Covenant on Civil and Political and Rights (ICCPR); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Optional Protocol to CEDAW; the Convention on the Rights of the Child (CRC) and the Optional Protocol to CRC on the Sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC).

### 1. Right to Justice and Integrity of the Judicial System

4. Since the end in 1992 of its burgeoning and devastating civil war that lasted 16 years, frustrated political stability, crippled economic growth, and curtailed social development, Mozambique has experienced slow but steady progress in state institutional building, democracy, and peace building. But much remains to be desired to enhance State's duty to protect human rights. One area where reforms continue to languish behind is adequate access to justice and integrity of the judicial system.
5. Despite some developments in the administration of justice, the legal system continues to register high rates of procedural delays in the public prosecution service and administration of justice in criminal cases. Prisons remain incapacitated and overcrowded with far-reaching consequences to the incarcerated. The slow pace of public prosecution service contravenes the right to justice and due process as enshrined in the Constitution of the Republic of Mozambique (1990). This is compounded by the subjective tendency of police and law enforcement agents in interpreting the civil and criminal laws. In this context, enforced disappearances, extrajudicial and summary killings, arbitrary detention of criminal suspects as well as political opponents, and the use of disproportionate force, torture, and degrading and inhumane treatment, and disregard to trial and due process remain commonplace.
6. According to the League of Human Rights in Gaza province, Chibuto District, there were at least six cases of torture reported in the first six months of 2015 that resulted in the conviction of the culprit by the Judicial

Court of Chibuto in Case No. 127/015. Also in Gaza, Bilene District, an allegation of summary execution of two citizens, namely **Fabião Maposse** and **Roberto Machava** was brought to the attention of the League of Human Rights. Additionally up to 70 inmates nationwide who have completed the duration of their prison sentences reportedly remained incarcerated.

7. While the last four years have seen a slight improvement, the health and sanitary condi-

## 2. Right to Land and Healthy Environment

8. Land rights and environmental protection remain one of the most persistent challenges in Mozambique, affecting mostly the rural populace, smallholder farmers and women. Several multinational business enterprises have been implicated in community land rights violations and have not carried out environmental impact assessment for their projects. Following the discovery of natural wealth and resources, malpractices in large-scale land acquisition have increased, amounting to community land grabbing by multinational corporations at the peril of community livelihoods.

9. For example, there are allegations of hundreds of thousands of hectares of community land expropriation by business ventures such as VALE, in Tete, WAMBAU, MAI, TWIN – CITY in Massingir in Gaza Province, RIO TINTO and its large-scale sands exploration project in Jangamo, in Inhambane Province, ProSavana in Nampula Province, among others. Most of these corporations acquired exploration licenses under questionable circumstances and engage in business activities without practicing adequate human rights due diligence. Moreover, other sustainability policies, such as environmental impact assessment have generally not been reflected in their practices. The rural

tions of penitentiary centers generally remain squalid and unlivable, posing health risks to the detainees and exposing vulnerability to the contraction of contagious diseases. However, prison overcrowding is expected to decrease with the adoption of the Criminal Procedure Code regulating the effectiveness of the new Penal Code in force since July 1<sup>st</sup> 2015, where about 30% of inmates will have access to judicial proceedings that may culminate in alternative preventive sentence measures in lieu of imprisonment.

communities and smallholder farmers have borne the heavy brunt of these businesses encroachment. For instance, communities have largely been excluded from their right to effective participation in decisions affecting their resources, environment and livelihoods.

10. Business activities that lacked adequate adherence to sustainability policies, including community participation and consultations, have equally contributed to hazardous environmental degradation and pollution of rivers, which in most cases serve as an integral source of livelihood and access to water and food. The adverse effects of these business practices ultimately contribute to health and nutrition problems in the rural communities. Furthermore, resettlements and any remedial and compensation measures that have been taken are inadequate and insufficient. In Topuito for example, people who have hitherto had good living conditions, now have water delivered by trucks in the resettlement areas. On days when the trucks are out of service, there is no water in the community.
11. There are cases of people who have lost their land, and moved to the mountains in desperate attempt to secure land for their households. The activities of NIQUEL Company – Dutch Capital – in the town of

Gruja, District of Buzi, in Sofala province, as well as in Lúrio Green in Mecuburi, for example, have contributed to the displacement of 169 families, particularly in Gurue. The emergence of several mega projects in Mozambique have caused conflicts between communities and the multinational companies that are involved in this resource extraction. Although there are Land Laws to protect the rights of local communities, economic interests, lack of civic education

and unfulfilled developmental promises associated with most of these projects have further exacerbated the conflicts. This was the case, for example, when a Chinese Government Company acquired 49, 000 hectares of arable land in the districts of Xai-Xai and Chibuto in Gaza province that led to the forced displacement of some 112,000 rural poor, mostly single mothers from their lands and source of livelihood, instead of improving their living conditions.

## 2. Rights of Women and Children

12. Women in Mozambique are often victims of myriad of rights abuses, including right to health, domestic violence; child marriage; unjust inheritance laws that deprive women from access to inheritance; and feminization of poverty. In addition women are discriminated against in the job market and employment policies, which creates gender imbalance in the workforce.

13. Women sexual reproductive health remains in disarray and challenged with lack of adequate civic education on sexual intercourse, health and family planning. Free contraceptive distribution policy meant to aid women and girls in mitigating unplanned pregnancies, and contraction of sexually transmitted diseases has lacked effective implementation. Instead contraceptive drugs wound up being traded in the black market with counterproductive implications that more often than not contribute to women health risks, including in the rampant practice of unregulated and professionally monitored abortions.

14. Similarly, children in Mozambique continue to suffer from government's failure to protect their rights, including the right to health and education, and right to food and water. For instance, infant mortality rate remains high and was last measured in 2014 by the World

Bank at 58.50 out of every 1000 live birth. Similar rates may be ascribed to children dropout and absenteeism from elementary education. Like women, children have also been subjected to domestic violence, sexual abuse and child marriage (girl child), and human trafficking.

15. Generally, Mozambique has acceded to CEDAW and the Optional Protocol to CEDAW. Mozambique has also acceded to CRC and the Optional Protocol to CRC on the Sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC). Internally, there are a number of domestic laws that have been institutionalized with a view to provide legal protection to women and children. Notable among these instruments is the Constitution of the Republic of Mozambique (1990) itself, but also the Family Law Act (2004), the Anti-Trafficking Law (2008), and the Domestic Violence Act (2009), among others. Yet institutionalized as they are, the implementation of these legislations remains largely toothless in providing effective legal protection to women and children as they continue to be exposed to human rights abuses.

### 3. Rights of Minorities and Vulnerable Groups (Persons with Disabilities, Persons living with HIV/AIDS and the Albinos)

16. In Mozambique, little attention is rendered to the plight of persons with disabilities, persons living with HIV/AIDS, and the Albinos who bear heavy brunt of discrimination and social stigmatization. Their right to health and education are particularly infringed. Disabled children find it difficult to receive education as school facilities fail to account for their technical as well as pedagogical accommodation. For instance, there are often no special arrangements to ensure disabled persons are able to commute to schools. In addition, schools are ill-equipped to provide easy access to persons with disabilities. Elementary school teachers are likewise ill-trained to provide education to persons with disabilities. Collectively this means that persons with disabilities find it hard to seek education. The few who manage to receive education are discriminated against and often not accounted for in employment practices.
17. Right to health is also breached, especially in relation to persons living with HIV/AIDS, who are often stigmatized and discriminated against in all aspects of life, including in employment and education practices. Persons with Albinism live in constant fear for being lynched for body parts purposes, as a lucrative market for trading Albinism body parts based on superstitious and erroneous traditional belief systems.
18. Mozambique has acceded to the Convention on the Rights of Persons with Disabilities

(CRPD). Domestically, rights of persons with disabilities are implicitly or explicitly enshrined in the Constitution (1990), and the 1999 Act on the Policy for People with Disabilities. The 1999 Act discourages discrimination and promotes inclusion and accommodation of persons with disabilities in all facets of life. Specifically it provides the legal framework to protect the rights of persons with disabilities, including the right to an independent life; right of integration into the family and the community; right of rehabilitation and access to compensation; right to education (general, special, vocational, or otherwise); right to access to workplace; right to protection; right of access to social services, transportation, and enclosed or reserved spaces; right to inclusion and participation in decision making more generally or those specifically affecting persons with disabilities; and right of access to information as well as recreation, among others. Moreover, there are national organs and institutions, such as the Ministry of Health and the Department of Community Health; the National Council to Combat AIDS; the Ministry of Women and Social Affairs and the National Institute of Social Affairs. These institutions have been established to implement policies that ensure the rights of persons with disabilities, the elderly and other minority, vulnerable and marginalized groups are protected, but they have generally failed to be effective in implementing these policies.

### 4. Right to Effective Political Participation

19. Mozambique has enjoyed twenty two years of relative peace and twenty years of electoral democracy, holding its last round of general elections in October 2014. Yet the democratic process has been marred with political ten-

sions between the erstwhile political rivals the ruling Frelimo and the opposition Renamo political parties. Since 2009 the political tension has continued to rise and intensify, interspersed with armed violent exchanges be-

tween government forces and “residual forces” of Renamo. The political violence escalated in the buildup to the last general elections and almost dragged Mozambique back into a full-fledged civil war had political concessions not been offered by the ruling party.

20. The underlying causes of the intermittent violent conflict are many and varied. But the most central contributing factors involve questions surrounding the integrity of the political process, the credibility of the outcome of general elections, inclusive political participation and representation, and transparency and accountability in government performance and social and economic transactions. The proximate causes thus involve political power struggle, as well as parity in political representation, including in the national Electoral Commission overseeing the conduct of the general elections. Political power is seen to be centralized and concentrated in the hands of one political party, with corruption paralyzing effective provision of social and economic services. This is aggravated by the popular belief that only elite few are benefiting from the natural resources of Mozambique at the expense of the overwhelming majority of the population, particularly with the rapid economic growth boosted by the oil and gas explorations.

21. Mozambique’s national Constitution (1990) and the amended Constitution (2004) in the preamble stipulate that Mozambique as a Sovereign and Independent State is founded on the “ideals of freedom, unity, justice and progress.” The Constitution also provides for the basis upon which political power is structured and centered on “democratic rule of law, based on the separation and interdependence of powers and on pluralism...of expression and partisan organization and on respect for and the guarantee of fundamental rights and liberties of citizens.” Equitable civil and political rights and freedoms and political participation and representation, and devolution of powers are equally delineated, for instance, in chapter IV of the Constitution. Yet political tensions and violence persist and accompany the democratic process for perceived manipulations and allegations of ballot tampering each time general elections are held and each time the ruling party retains political power. Other legislations have been enacted to compliment the Constitution, such as the Corruption Act (2004), and the Public Prohibition Law (2012), among others, with a view to stem corruption. But corruption remains a grave cause for concern and a hindrance for effective social and economic service delivery in Mozambique.

## Recommendations for Action by the State Under Review

Based upon the above analysis, we call upon the government of Mozambique to consider the following recommendations.

### Legal Framework

- Ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Optional Protocol to ICESCR as recommended by majority of UN Member States and as “accepted” by the Government of Mozambique during the first cycle.
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICED) as recommended by several UN Member States and as “accepted” by the Government of Mozambique during the first cycle.
- Ratify the Rome Statute of the International Criminal Court (ICC) as recommended by several UN Member States and as “accepted” by the Government of Mozambique during the first cycle.

- Consolidate domestic legal framework and strengthen the capacity of law enforcement institutions to implement International Legal Instruments to enhance human rights protection and promotion in Mozambique.
- Establish and monitor judicial and non-judicial complaint and remuneration mechanism to ensure that communities and individuals have access to justice and are fairly compensated where human rights violations have been demonstrated to have occurred.

### Right to Justice and Integrity of the Judicial System

- Ensure impartial implementation of rule of law by all relevant state institutions and law enforcement agencies as stipulated in the Constitution, especially in matters related to the criminal justice system.
- Adoption and implement the Criminal Procedure Code and conduct capacity building trainings for police and related law enforcement agencies on compliance with international and national human rights instruments.
- Hold perpetrators of human rights abuses, including members of the police to account before the court of law.
- Immediately release prisoners who have completed their sentences, ensure swift conduct of trials and due process in criminal cases and improve the sanitary conditions of penitentiary centers.

### Right to Land and Healthy Environment

- Publish large-scale land acquisition deals to increase transparency and accountability and make the attainment of free, prior and informed consent mandatory for all Multinational Corporations engaged in large-scale agriculture or natural resource extraction to mitigate scenarios of land grabs, and protect the livelihood of smallholder farmers and rural communities.
- Ensure Multinational Corporation and Small and Medium Enterprises (SMEs) adhere to sustainability policies and make it mandatory to conduct and publish human rights due diligence and social and environmental impact assessment reports prior to any land lease/sale agreement.

- Adopt specific laws for the protection of the environment and hold liable in a criminal court of law those deemed to have contributed to environmental degradation and pollution.

### Rights of Women and Children

- Enact binding legal mechanisms reflecting Mozambique's commitment to international legal instruments on women and children rights to combat child marriage and bring to justice those found guilty of violations.
- Harmonize the laws, policies and customary and religious norms and practices to respect the minimum marital age of 18 years old under all circumstances.
- Enact new laws to enhance women's sexual reproductive health, and disseminate these laws widely through awareness raising and civic education campaigns and messaging to ensure women are educated on healthy lifestyle, including in sexual reproductive health and free choice to abortion that is conducted and supervised by medical professionals.
- End all forms of discrimination against women, including devising inheritance laws in conformity with relevant international human rights standards to guarantee women's rights to inheritance and protect them against domestic violence.
- Implement existing legal frameworks to protect women rights and the right of the child, including the right to life, health, education, food, and water, as well as protection against sexual abuse and human trafficking as enshrined in the Constitution of the Republic of Mozambique (1990) itself, but also the Family Law Act (2004), the

Anti-Trafficking Law (2008), and the Domestic Violence Act (2009), among others.

### Rights of Minorities and Vulnerable Groups (Persons with Disabilities, Persons living with HIV/AIDS and the Albinos)

- Devise implementation guidelines for the 1999 Act on the Policy for People with Disabilities and eliminate all the barriers (legal, practical and customary) for their full participation in the society.
- Improve the quality of access to healthcare, including to those living with HIV/AIDS, and establish and implement new laws to discourage discrimination and social stigmatization of persons living with all forms of disability, real or perceived, including those living with HIV/AIDS, Albinism, and other vulnerable and marginalized groups.
- Criminalize all forms of discrimination and violence against the Albinos to be punishable in the court of law.

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### Photo

LWF Mozambique

### Right to Effective Political Participation

- Embark on political reforms to ensure inclusion, parity and participation of all political forces in the political process to discourage recourse to violence as a means to settling political differences.
- Address underlying and proximate causes of violent conflicts by ensuring equitable access to social and economic service delivery.
- Put in place transparency and accountability mechanisms in government performance and transactions, including in the economic sector and resource distribution, and in dealing in land allocations and Multinational Corporations.
- Reinvigorate and impartially implement anti-corruption laws in word and spirit to stem corruption and enhance service delivery.



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