

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 71<sup>TH</sup> SESSION MOZAMBIQUE, 2<sup>ND</sup>- 12<sup>TH</sup> REPORTS 3-6 AUGUST 2007

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### Information submitted to the Committee

Mozambique appeared before the Committee on the Elimination of Discrimination (the Committee) on 3 and 6 August 2007 to present its 2<sup>nd</sup> to 12<sup>th</sup> periodic report.<sup>1</sup> The report covered the period from 1986 to 2004. It provided an overview of the measures relating to the implementation of the *Convention on the Elimination of All Forms of Racial Discrimination* (the Convention) by Mozambique and paid special attention to the political measures put in place, such as the Five-Year Plan for 1995-1999 concerning social justice. It also reasserted the objectives and priorities of the Government: reduction of the level of absolute poverty; respect for human rights contained in the Universal Declaration of Human Rights; efforts to consolidate the rule of law; preservation of national unity and the participation of Mozambique citizens in socio-economic and political life.

The Committee congratulated Mozambique on resuming dialogue with the Committee after so many years. All the members expressed their understanding for the delays experienced by this country in the submission of reports due to the successive wars it faced. However, Committee member Ms Dah regretted the lack of

<sup>1</sup> CERD/C/MOZ/12, 10 April 2007. Available at <http://www.ohchr.org/english/bodies/cerd/cerds71.htm>.

balance in the information provided in the report. She added that the list of issues submitted by the country rapporteur had gone unanswered,<sup>2</sup> though the head of the delegation gave some responses in her presentation. However, this remark can be explained by the fact that the Committee received the written replies on the last day of the consideration of the report by the Committee. The list of issues addressed the existence of a definition of discrimination in domestic law and the fact that the Penal Code does not define or punish racism; customary law and the power of traditional authorities; the participation of ethnic groups in the decision-making process and affirmative action measures; and whether the State is considering to declare that it recognises the competence of the Committee to receive and examine individual complaints.

## Themes and issues

The delegation of Mozambique was headed by Mrs Esperança Machavela, Minister of Justice. The Permanent Representative of Mozambique to the United Nations office at Geneva and representatives from the Ministry of Justice, Foreign Affairs and Cooperation, and Education and Culture were also present.

In her opening statement, the head of the delegation and Minister of Justice, Mrs Esperança Machavela, recalled that Mozambique was an anti-racist country attached to the fundamental principles of dignity and equality of human beings. This is confirmed in several provisions of the Constitution providing for the equality of all citizens and prohibiting discrimination based on race, colour, sex and ethnic origin. She then gave an overview of the country's history and demographic makeup, presented her country's report and highlighted several themes, such as refugees, customary law, education and access to health care and justice. However, she did not directly answer to the list of issues submitted by the Committee.

The Committee focused its questions on the setting up of a National Human Rights Institution (NHRI) in accordance with the Paris Principles. It enquired on the situation of foreigners and of their rights in comparison to Mozambique nationals, and on cases of racial discrimination. It was also interested to know more about the place of customary law in the country. It also placed a lot of emphasis on the multiculturalism of Mozambique and issues of language.

## Implementation of the Convention

The Committee's country rapporteur on Mozambique, Mr Ewomsan, noted that prohibition of discrimination was embedded in the Constitution in Articles 36 to 39. However, he regretted that no law on the elimination of racial discrimination containing specific measures has been adopted. On the more general question of the incorporation of international law into domestic law, the Committee acknowledged that it was disturbed by the reply of Mozambique to questions four and eight of the list of issues, which stated that the Conventions were already in conformity with domestic law. It pointed out that it was rather the contrary and that being party to a Convention obliged the State to put its domestic law in line with its international obligations. It also added that the implementation of Article 4 of the Convention was a mandatory provision.

On the fact that there was no specific legislation criminalizing racial discrimination, the head of the delegation responded that it was difficult for the Government to find out a deep explanation on the way Mozambique criminalizes racial discrimination because all human beings are considered to be equal. However, she emphasised that the Penal Code was being revised and consideration was given to establish criminal responsibility for acts of racial discrimination, xenophobia and other forms of intolerance. On the question of the incorporation of international instruments into domestic law, the head of the delegation clarified that the reply provided to the question of the list of issues meant that quite often Mozambique does not have to change its domestic law to be in line with the Convention because it already matches. However, when domestic law is not in line with the international instruments ratified, laws are drafted. She added that

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<sup>2</sup> Available at <http://www.ohchr.org/english/bodies/cerd/docs/AdvanceVersion/mozambiqueloi71.doc>.

there is an Interministerial Committee responsible to review legislation and ensure its conformity with international instruments to which Mozambique is a party.

In its concluding observations, the Committee acknowledged with satisfaction Mozambique's ratification of a number of international human rights instruments.<sup>3</sup> It also acknowledged the State's efforts to enshrine the principle of non-discrimination and equality through its Constitution of 2004 and its language policy. However, the Committee remained concerned about the lack of legislation on racial discrimination. The Committee requested further information on customary law and on the role of community leaders in extra-judicial conflict resolution.

## **National Human Rights Institutions**

### ***The Ombudsman***

The Committee asked more information on the Ombudsman (*Provedor de Justiça*) established under the Constitution. It wanted to know if the Ombudsman has already been appointed and if he received any complaints on racial discrimination.

The delegation stated that the *Provedor de Justiça* was being established. He will be elected in the October 2007 Parliamentary session by two thirds of the vote.

In its concluding observations, the Committee expressed concern about the resources, independence, competencies and effectiveness of this institution, and requested detailed information on these points.

### ***The Commission on Human Rights***

In his presentation, the country rapporteur noted that Mozambique was currently setting up a national human rights commission in accordance with the Paris principles. Other experts acknowledged this process and hoped that the National Commission on Human Rights would be autonomous and with adequate standards. Mr Pillai asked Mozambique to submit information on the nature of the human rights competence of the Commission and reminded the delegation that in 2002 the Committee on the Rights of the Child had recommended the establishment of an independent body to monitor the implementation of the *Convention on the Rights of the Child*.

Mrs Esperança Machavela assured the Committee that the National Commission on Human Rights had been designed to ensure its effectiveness and credibility. She then added that, as contemplated in the draft law, the composition of the Commission would reflect the broad social and cultural diversity of the country and members would serve for five years. It would encompass representatives of human rights NGOs, the Bar Association, academic institutions and experts in the field of human rights. The Commission will have to submit an annual report to the Parliament. However, it may submit special reports on matters of urgency.

In its concluding observations, the Committee recommended that Mozambique establish the future National Commission on Human Rights in line with the Paris Principles and provide it with adequate resources.<sup>4</sup> The Committee also recommended that Mozambique avoid creating conflict in the mandates of the Commission and the Ombudsman.

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<sup>3</sup> International Covenant on Civil and Political Rights in 1993, Convention on the Rights of the Child in 1994, Convention on the Elimination of All Forms of Discrimination against Women in 1997 and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in 1999.

<sup>4</sup> The Paris Principles relating to status of national institutions (General Assembly *Resolution 48/134*).

## **Cases of discrimination**

The country rapporteur raised the question of cases of racial discrimination that occurred in Mozambique. The State's report stated that they were sporadic and not reflecting an institutionalised Government policy. Nonetheless, Mr Ewomsan required specific examples and further details on the measures taken to deal with such outbreaks. He further explained that if the State was not aware of such cases, it would be difficult for it to make any progress on this issue. He also expressed concern about alleged politically motivated violence. Members of the Renamo opposition party have been victims of discrimination in terms of employment and the country rapporteur was eager to know the steps the Government intended to take on this issue.

In response, the delegation noted that manifestations of racial discrimination came in different ways and that provisions are incorporated in the Constitution. However, sanctions for racial discrimination do not currently exist but as acts of discrimination may arise with globalisation and the increase in foreigners in Mozambique, it may be time to take into consideration this issue by drafting a specific law.

In its concluding observations, the Committee expressed concern over the lack of specific penal provisions implementing article 4 of the Convention in domestic legislation. It accordingly recommended the adoption of legislation to ensure the full and adequate implementation of this article in the legal system. The Committee also recommended that Mozambique strengthen existing measures to prevent and combat xenophobia and racial prejudice, and requested information on the measures adopted with regard to promoting tolerance.

## **Minorities**

According to the report, Mozambique is composed of 16 ethnic groups. The Committee wished to know if all these groups received the same level of treatment. If they would require the same level of treatment, he wished to know how the State would address this issue.

The Minister of Justice highlighted that it was hard to talk about "minorities" in Mozambique, especially if you define it by number. For instance, the Muchopes ethnicity is one of the smallest, but the Prime Minister belonged to this group. She then explained that it was difficult to talk about affirmative action because the country has a strong policy of social integration. This is considered more of a preventive tool than a sanction. She also added that there has not been a strong demand for that type of action.

The Committee expressed satisfaction with this reply regarding vulnerable groups and the reason why Mozambique does not consider that there are any minority groups in the country. It also commended the State party on the reasons given to justify the lack of affirmative actions measures. It confirmed that there was no obligation to take these kinds of measures unless a group was clearly disadvantaged.

In its concluding observations, the Committee recommended that Mozambique take the necessary measures to expand the provision of legal assistance and aid to the whole population on its territory, and to improve the capacity and efficiency of the judicial system in order to ensure access to justice for all members of disadvantaged ethnic groups.

## **Situation of Foreigners**

The Committee requested further clarifications on the situation of foreigners in Mozambique, especially with regard to the rights that are granted to them. The Committee stressed that a number of rights enshrined in the Constitution are granted to citizens of Mozambique. Nonetheless, the law states that foreigners should have the same rights as Mozambique citizens except where provided otherwise. It therefore wondered if the provisions of the Constitution were to be read as to include foreigners, and what were the rights of non-citizens. Regarding foreign workers, Mr Avtonomov noticed that more work authorisations than work permits

were granted and therefore wished to know the difference between them. On the question of citizenship, the country rapporteur wanted the State party to shed light on this. To him, it appeared that few persons were granted Mozambique citizenship in comparison to asylum. Finally, another member of the Committee enquired on the means to acquire Mozambique citizenship, particularly in relation to minors.

A representative of the Ministry of Justice took the floor on this issue. As for the rights of non-citizens, he declared that they enjoy the same rights and guarantees as Mozambique citizens, except for political rights. Some positions, such as diplomats or governors, are reserved to Mozambique nationals. With regard to work authorisations and work permits, he clarified that the difference lays between employers and employees. Foreigners intending to work in Mozambique should hold a work authorisation. Foreign companies, including their owner, should be entitled to a work permit. The representative of the Ministry of Justice intended to clarify the question of the acquisition of citizenship but eluded the request of the country rapporteur. He declared that citizenship should be original (*jus solis* and *jus sanguinis*) or acquired (marriage, naturalisation or adoption).<sup>5</sup> Naturalisation can be acquired by a child under 18.

In its concluding observations, the Committee encouraged Mozambique to ensure that non-citizens enjoy economic, social and cultural rights without discrimination, and to facilitate the naturalization procedure for long-term residents.

### **Gender**

On the issue of gender equality, a Committee member asked how this principle was reflected among the different ethnicities. Another expert noticed that the programme to target poverty grants special place to gender equality. She also enquired on the number of women working at the Ministry of Justice, as judges and in the police forces.

The delegation responded that involvement of women in decision-making processes has improved. In 2007, women represented 37 per cent of Parliamentarians, against 28 per cent in 1997. She also highlighted that the Prime Minister was a woman, as well as six out of the 25 ministers and two provincials governors. Among other figures, she specified that a third of the 174 judges were women and that there were 44 women attorneys out of 168. Women represented 38 per cent of the whole justice system. She concluded by saying that the Ministry of Justice has launched a campaign to recruit more women because they have more sensitivity to approach gender issues in the Court.

### **Access to health care**

The subject of health care, especially HIV/AIDS, was dealt with by the head of the delegation in her presentation of the report. She stated that the HIV/AIDS infection rate was very high in Mozambique, with 16 per cent of adults HIV/AIDS positive and that a national strategy to combat this disease had been set up. She also explained that legislation preventing the exclusion and discrimination of HIV/AIDS positive persons was pending.

Mr Ewomsan expressed concern about the increase of HIV/AIDS cases and requested more details on the allegations by Amnesty International that there was discrimination in the area of health care in the country. However, the delegation did not address this question.

In its concluding observations, the Committee recommended that Mozambique strengthen its programmes aimed at providing universal access to health care, with particular attention to members of vulnerable groups. It also encouraged Mozambique to take further measures to prevent and combat HIV/AIDS, malaria and cholera.

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<sup>5</sup> Article 23 of the Constitution.

## **Access to justice**

In her introductory speech, the Minister of Justice touched upon the question of access to justice. She said that Mozambique was continuing its efforts to consolidate legal instruments, in particular in criminal justice. For instance, the Institute for Legal Aid and Legal Assistance had been established to guarantee the rights of the defence. The objective is to ensure that poor or vulnerable people benefit from legal assistance as soon as they are in the police station. The mission of the Institute was also to strengthen the mechanisms of promotion and protection of human rights through the training of magistrates, police and prison officials, as well as introducing human rights courses in the police academy curriculum. She also pointed out that traditional authorities were formally recognised by the Law of the Local Organs of State, and that customary law was relevant in the community courts.

Taking note of the information provided, Committee member Ms Dah expressed interest in the issue of neighbourhood justice. She enquired whether this system was optional and if parties had the possibility of recourse to the regular judicial system. She also wondered if the traditional institution covers other areas of life than judicial ones. Finally, she commended Mozambique for the availability of legal aid at a grass roots level.

The delegation replied that in certain parts of the country, *Régulos* (traditional leaders) have a great influence over communities and can act as a mediator in a community council to solve disputes that arise. They are recognised by the State as community authorities and work closely with local authorities on various issues including peace, justice, land tenure, employment, food security, public health and education. They can be consulted on fundamental matters affecting the life, well-being and development of the local community. As for neighbourhood justice, the delegation clarified that it was an optional jurisdiction to promote dispute settlement outside the court. However, in case the parties were not satisfied with the decision of the communal justice, they are able to appeal to regular courts.

In its concluding observations, the Committee recommended that Mozambique ensure that appropriate provisions are included in national legislation regarding effective protection and remedies against violations of the Convention. Furthermore, the Committee recommended that the general public be duly informed of the legal remedies available for victims of racial discrimination.

## **Education and language**

In her presentation, the head of the delegation highlighted that education was a tool in the alleviation of poverty and to integrate people in society. A Strategic Plan for the Development of Education had therefore been put in place based on three main aspects: the expansion of access to and equality of education; the improvement of education; and the development of institutional capacity building. Based on these goals, human rights issues have been introduced in schools curricula and a pilot project of bilingual education was established between 1992 and 1997, and then extended to encompass more languages and more schools.

The country rapporteur appreciated that the State emphasised the importance of introducing human rights in the school curricula so that citizens can assess their rights properly. He welcomed the measures taken by Mozambique to combat hatred and that this goal has been achieved through human rights education. Other experts then brought the issue of bilingual education and commended Mozambique for this initiative as a fulfilment of its obligations to provide education in the official language and to support the aspirations of ethnic identities. They wished the State to provide an assessment of the achievements in the area of languages in the next report. However, one member wondered if teaching local languages was helpful to maintain the unity of the country and if it was an obligation of the State to teach all local languages with its funds. He also suggested that teaching English might be useful since Mozambique is surrounded by English speaking

countries. Concern was also expressed at the fact that, according to figures available in the report, only 20 per cent of men and only 12 per cent of women spoke the official language of Portuguese.

As far as language is concerned, the head of the delegation rectified the statistics provided in the report, specifying that they had been provided by the Ministry of Education on a specific issue. She assured that Portuguese was the most spoken language in Mozambique, spoken by 80 per cent of the population. She reminded the Committee that classes were in Portuguese in primary and secondary schools.

In its concluding observations, the Committee acknowledged with appreciation the language policy of Mozambique.<sup>6</sup> The Committee requested information on the human rights programmes in school curricula as well as on the specific training courses of public officials on the provisions of the Convention.

## Trafficking

The issue of trafficking was raised by the Committee during the interactive dialogue. The country rapporteur raised the issue of trafficking in organs, particularly child organs, occurring in the Manica and Gabo Provinces, which are used by traditional healers and sold in South Africa and Zimbabwe. He asked the State to provide more details on this question. Another expert questioned the plans of the Government, such as training police officials, to implement the provisions of the Protocol to the UN Convention on Transnational Organized Crime on Trafficking in Women and Children, ratified by Mozambique in 2006, because it is alleged that 1000 children per month are trafficked to Johannesburg and that trafficking in women remains.

A delegate took the floor on this issue but did not address trafficking in organs per se. He reminded that Mozambique ratified *the Additional Protocol to the UN Convention against Transnational Organized Crime to Prevent, Punish and Suppress Trafficking in Persons, particularly Women and Children* in 2006. He specified that after suspicion of trafficking in organs, a law has been drafted to prevent and combat trafficking in persons and was waiting approval. This law deals with the issues raised in the Protocol: the definition is consistent with the one under the Protocol; abuses of power by Provinces are addressed; and there are provisions on the prevention, punishment, protection, identity and assistance to victims and the apprehension of traffickers assets and revenues. The representative highlighted that it was important to involve the whole country (relevant branches of the government, the Attorney's General office and civil society) in the implementation of this law and therefore a plan of action would be set up as well as information campaigns.

In its concluding observations, the Committee noted the absence of any specific policy to prevent and combat human trafficking. It thus recommended that Mozambique adopt legislation and other effective measures to adequately address this issue.

## Other issues

Among other issues that were dealt with by the Committee, the country rapporteur brought up the fate of refugees during his presentation. He requested from the delegation certain clarifications on two refugee camps set up in Mozambique and about any cases of forced repatriation. Committee member Mr Kjaerum expressed its satisfaction as to the introduction of a right *to* (and not "of") asylum in the Constitution of the country.

The representative of the Ministry of Justice summarised the treatment of refugees (provision of accommodation, education programmes, for adults and children; access to land and employment in private and public institutions) and highlighted that since 2004 the number of persons seeking refugee status has decreased, perhaps because of the improvement of the security situation in their countries of origin, mainly

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<sup>6</sup> This policy includes the use of local languages, together with the official language, in curricula of primary schools as well as the promotion of national languages and cultures.

Somalia and the Great Lakes region. Concerning repatriation, he assured that it was undertaken in accordance with UNHCR solutions for repatriation and that it was voluntary.

In its concluding observations, the Committee noted Mozambique's efforts to enhance the legal framework and administrative procedures regarding asylum-seekers and refugees. The Committee encouraged Mozambique to take steps to better protect the rights of stateless persons and refugees.<sup>7</sup>

Several experts enquired on the relationship between the 16 ethnic groups and the 732 religious groups. They wished to know if there was a link between ethnicity and religion, and how all these groups could live peacefully.

The head of the delegation replied that religion played a fundamental role in the peace process of the country because the church was involved and peace negotiations were started by religious organisations. She added that every person who wants to manifest his or her religion can register his or her religious organisation.

Several members of the Committee enquired whether Mozambique would envisage withdrawing its reservation to Article 22 of the Convention. Others also asked if the State party would ratify the amendment to Article 8 and accept the competence of the Committee to consider individual complaints under Article 14 of the Convention. The delegation did not address these points.

In its concluding observations, the Committee also recommended that Mozambique take action to better adhere to the Convention.<sup>8</sup>

### **Conclusion and next steps**

The country rapporteur presented his final conclusions to close the session. He thanked the entire delegation for the frank and sincere exchange of views, and congratulated the head of the delegation for her spirit of cooperation. He also noted the relevance of the replies to the questions of the Committee. He commended the efforts made by Mozambique to combat discrimination but reminded that more needs to be done to bring national legislation in line with the Convention.

The head of the delegation declared that it has been a privilege to share this moment with the Committee and it had been a learning process. She added that Mozambique was now returning to the international arena, taking into account concerns of the international community. She concluded by telling the Committee members that she supports their work because she attaches great importance to their mission.

Periodic reports of Mozambique before other treaty bodies are overdue. The only report that was previously examined was the one under the *Convention on the Rights of the Child*. In this regard, the Committee on the Rights of the Child recommended achieving implementation of human rights and democracy components within school curriculum and strengthening the institutional capacity and infrastructure of State education.<sup>9</sup> It also advised the State to undertake public education campaigns aimed at ending all forms of discrimination.<sup>10</sup> On access to health, the Committee asked Mozambique to improve access to primary health care for all

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<sup>7</sup> In particular, it encouraged Mozambique to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Furthermore, it also recommended Mozambique to withdraw its reservations to the 1951 Convention relating to the Status of Refugees.

<sup>8</sup> In particular, it recommended that Mozambique consider making the optional declaration provided for in article 14 of the Convention, and that Mozambique withdraw its reservation to article 22. It also recommended that Mozambique ratify the amendments to article 8, paragraph 6, of the Convention, concerning the funding of its meetings by the UN regular budget.

<sup>9</sup> Paragraph 57, CRC/C/15/ADD.172 (CRC, 2002).

<sup>10</sup> Paragraph 26, CRC/C/15/ADD.172 (CRC, 2002).

children and their families.<sup>11</sup> Finally, the Committee recommended the State to take measures to end trafficking.<sup>12</sup>

In its concluding observations, the Committee requested that the periodic report and the related concluding observations be widely disseminated in Mozambique. It also recommended that Mozambique provide information within one year on the way it has followed up on the Committee's recommendations. The Committee further recommended that Mozambique submit its thirteenth and fourteenth periodic reports in a single report on 18 May 2010, and specified that the report should address all points raised in the present concluding observations.

*Last revised and updated: 4 October 2007.*

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<sup>11</sup> Paragraph 47, CRC/C/15/ADD.172 (CRC, 2002).

<sup>12</sup> Paragraph 67, CRC/C/15/ADD.172 (CRC, 2002).

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