

# **ECPAT International - UPR submission – Mozambique – July 2010**

## **Comments on the status of children's right to protection against sexual exploitation in MOZAMBIQUE**

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### **1. Preamble**

The government of Mozambique is party to the Convention on the Rights of the Child, since its ratification in 1994 and as such is committed to promoting and protecting, children's rights under its jurisdiction. This commitment to uphold the rights of children has been bolstered with the ratification of other international legal standards including the *Optional Protocol on the sale of Children, Child prostitution and Child Pornography*. National Constitution of Mozambique reflects these commitments by placing emphasis on children's rights. Special policies and laws specifically tailored to protect children from specific violations of their rights, such as sexual exploitation, have also been established to be implemented at national and local level by specific institutions. Despite these achievements, the normative framework to protect children from sexual exploitation is not yet fully aligned with the provisions of relevant international legal standards. Furthermore, activities undertaken by institutions in charge of the implementation and enforcement of the normative framework require articulation, coordination and monitoring for effective impact delivery of their mandate and to bring positive impact on children's lives. Delivery of child rights is also undermined by factors such as geographical disparities, natural disasters and the lack of adequate budget allocation.

In addition, there is a lack independent and autonomous constitutional institution specifically dedicated to monitor and report on the situation of children's rights in Mozambique, nor specifically designated under the newly created National Human Rights Commission, which would be mandated to handle individual complaints lodged by children whose rights have been violated.

### **2. Current normative and institutional framework for the promotion and protection of children against sexual exploitation**

#### **2.1 Normative framework**

*Policies:* The government of Mozambique has adopted and is implementing a *National Action Plan for Children 2006-2011*, which contains a specific chapter on the protection of children against violence, neglect and sexual exploitation. The government is also implementing a *Plan of Action for Orphaned and Vulnerable Children 2005 - 2010*, which include children victims of abuse and sexual exploitation.

*Legislation:* At international level, Mozambique has ratified the main international legal standards which provide children with protection against commercial sexual exploitation (*Convention on the Rights of the Child* and its *Protocol on Sale of Children, Child Prostitution and Child Pornography* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime*). At regional level, Mozambique has ratified the *African Charter on the Rights and Welfare of the Child*. At national level, Mozambique enacted in 2008 the *Promotion and Protection Law on Child Rights*. Furthermore, it adopted the *Law against Human Trafficking* which contains provisions protecting children from being trafficked. The Penal Code

also contains provisions that can be used to protect children against CSEC, especially against trafficking and prostitution.

## 2.2 Institutional framework

In March 2009, the National Council on Child Rights was established in order to coordinate, monitor and evaluate the implementation of children's rights in Mozambique by relevant governmental agencies such as the Ministry of Women and Social Affairs or the Provincial Directorates of Women and Social Action. In 2009, Mozambican authorities have also established an independent and autonomous constitutional body to protect and monitor the situation of human rights in Mozambique: the National Human Rights Commission.

### **3. Implementation and efficiency of the normative and institutional framework for the promotion and protection of children against sexual exploitation**

#### 3.1 Implementation and efficiency of the normative framework

*Policies:* Although the *National Action Plan for Children 2006-2011* and the *Plan of Action for Orphaned and Vulnerable Children 2005 – 2010* contain provisions addressing CSEC, they do not provide for a comprehensive policy framework aiming at protecting children against all forms of CSEC.

*Legislation:*

Under the Article 18 of the Constitution of Mozambique international children's rights standards ratified by Mozambique such as the Convention on the rights of the Child are not directly applicable and do not supersede domestic legislation. This is a major issue in cases of conflicts between the provisions of international standards and the provision of national laws.

Although the enactment of the *Child Rights Protection Law* is a major achievement in relation to the standardisation of the protection of children's rights in Mozambique, none of the provisions relating to the definition and criminalization of child trafficking, child prostitution, child pornography and child sex tourism are in line with the relevant international legal standards. In addition to the legislative gaps, enforcement of the above mentioned legal standards shows to be weak, mainly due to a lack of adequate training for law enforcement personnel.

In addition, it has to be highlighted that in some instances customary law takes precedence over national laws. This situation can lead to children's rights violations.

#### 3.2 Implementation and efficiency of the institutional framework

The implementation of both above mentioned plans of action is undermined by the very limited resources that are allocated to the realization of the mandate of National Council on Child Rights which is in charge of the implementation, monitoring and evaluation of these plans of action. According to the Committee on the rights of the Child the National Council on Child Rights receives less than 1 percent of the national budget. Furthermore, although there is an independent constitutional body to monitor the implementation of human rights at local level (the National Human Rights Commission), there is no such institution specifically dedicated to monitor and report on the situation of children which would handle complaints on breaches of children's rights and action against the violations.

In addition, although Mozambique made progress with regard the establishment of mechanisms to report crimes against children, such as the 116 toll-free hotline, these mechanisms do not adequately address the specific needs of children victims of CSEC.

Although Mozambique authorities have established gender-sensitive special police units to provide support and assistance especially to women and children victims of violence, there is a lack of specific procedures to adequately identify child victims of trafficking as well as a lack of special institutions and services providing specific assistance (medical, psychological, legal, education) to children victims of CSEC.

#### **4. Cooperation with regard to implementation measures**

Cooperation between the government of Mozambique and NGOs is well established and very instrumental with regard to child protection. With regard to combating CSEC, the government strongly collaborates with Rede da Criança, a large network of NGOs which has robust skills and experience in that field. However, it is reported that involvement of civil society stakeholders in public decision-making is still weak.

At regional level, Mozambique is actively involved through the Southern African Development Community (SADC), which adopted in may 2009 a 10 year *Strategic Plan of Action on Combating Trafficking in Persons, especially Women and Children in the SADC Region*. In addition, the government of Mozambique has developed a cooperation agreement with the government of South Africa with regard to the assistance and repatriation of children victims of trafficking. NGOs from country members of SADC also develop regional initiatives to combat child trafficking through the Southern Africa Regional Network against Trafficking and Abuse of Children (SANTAC).

#### **5. Recommendations**

- Develop a specific national Plan of Action addressing child trafficking and other forms of child sexual exploitation
- Ensure that the National Council on Children's Rights is provided with sufficient financial resources to realize its mandate.
- Establish an independent and autonomous constitutional institution in charge of monitoring the situation of children's rights in the country which has the mandate to independently investigate and act on complaints on violations against children.
- Review and amend existing legislation to define and criminalise child prostitution, child trafficking, child pornography/child abuse materials in line with the provisions of the OPSC
- Adopt extraterritorial legislation to punish Mozambican residents who commit acts related to commercial sexual exploitation of children in foreign countries
- Ensure that specific procedures to adequately identify children victims of CSEC and especially of trafficking for sexual purposes are developed and adopted.
- Strengthen capacities of law enforcers in the field of child rights and CSEC issues to bring effective enforcement of the law to protect children. Perpetrators of sexual offenses against children should be effectively punished.
- Access to adequate care, recovery and reintegration services should be provided for child victims of CSEC throughout the country.
- Specific institutions receiving children victims of CSEC should be established. Minimum standards of care should be developed and adopted by these institutions. In that regard, caregivers should be provided with specific training on providing care and assistance to children victims of CSEC.
- Involvement of children, young people and civil society stakeholders in public decision – main should be increased.