

ACCESS TO JUSTICE FOR CHILDREN: MOZAMBIQUE

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

The CRC forms part of the national law of Mozambique. Article 18 of the Constitution of Mozambique provides that approved and ratified international treaties enter into force in the Mozambican legal framework upon their official publication.¹ The CRC became effective on 23 October 1990 upon publication in the country's official gazette the *Boletim da República*.²

B. Does the CRC take precedence over national law?

The CRC has the same weight as national law. Article 18 of the Constitution grants ratified international instruments the same interpretive value as national laws in the event of conflict.³

C. Has the CRC been incorporated into national law?

Yes, the CRC is incorporated into the national legal system.

The Constitution emphasizes the rights of children in Article 47, granting them the right to the protection and care necessary for their personal welfare and the right to freedom of expression, in addition to emphasizing the best interests of the child as a primary consideration in all public and private actions concerning children.⁴ Provisions of the CRC have been incorporated into the Children Act (*Lei de Bases de Protecção da Criança*),⁵ creating a formal legal framework for the protection of children's rights. Other elements of the CRC have been introduced into national law through the revision of existing legislation and drafting of new legislation designed to ensure the protection of children in a way that is reflective of Mozambique's

¹ Constitution of the Republic of Mozambique, art. 18, available at: http://www.portaldogoverno.gov.mz/Legisla/constituicao_republica/constituicao.pdf (Portuguese) and [http://confinder.richmond.edu/admin/docs/Constitution_\(in_force_21_01_05\)\(English\)-Mozlegal.pdf](http://confinder.richmond.edu/admin/docs/Constitution_(in_force_21_01_05)(English)-Mozlegal.pdf) (English translation).

² *Second periodic report of Mozambique to the UN Committee on the Rights of the Child*, CRC/C/MOZ/2, 23 March 2009, para. 44, available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.MOZ.2.pdf>.

³ Constitution, art. 18, §2.

⁴ Constitution, art. 41.

⁵ Available at: http://www.portaldogoverno.gov.mz/Legisla/legisSector/es/sociedade/lei_bases_crianca.pdf (Portuguese).

obligations under the CRC.⁶ Specifically, the Government has approved the following legislation regarding the protection of children:

- i. the Family Law (*Lei da Família*),⁷ which governs legal aspects of family relationships in accordance with CRC principles;
- ii. the Civil Registry Code (*Código de Registo Civil*),⁸ providing specific civil procedure rules applicable to conflicts concerning family relationships;
- iii. the Labor Law (*Lei do Trabalho*),⁹ governing labor practices, specifically including with respect to children;
- iv. the Law for the Promotion and Protection of the Rights of the Child (*Lei de Promoção e Protecção dos Direitos da Criança*),¹⁰ incorporating CRC principles into domestic legislation regarding child protection;
- v. the Law of Legal Organisation of Minors (*Lei da Organização Tutelar de Menores*),¹¹ establishing bases for protection of children in criminal and civil matters;
- vi. the Law Against Human Trafficking (*Lei de Prevenção e Combate ao Tráfico de Pessoas*),¹² providing for the methods to prevent and counteract human trafficking of women and children.

D. Can the CRC be directly enforced in the courts?

No, the Convention is not directly applicable.¹³

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

To date, there are no readily available cases that cite the CRC. Court decisions are rarely published, so availability of Mozambican jurisprudence

⁶ *Second periodic report of Mozambique*, para. 43; see also paras. 77–92 (describing legislative measures implemented in Mozambique since the submission of the first periodic report in 2000).

⁷ Law No. 10/2004, available at: http://www.wlsa.org.mz/lib/pdf/Lei_da_Familia.pdf (Portuguese, annotated).

⁸ Law No. 12/2004, available at: http://www.portaldogoverno.gov.mz/Legisla/legisSectores/adminCivil/codigo_registo_civil.pdf (Portuguese).

⁹ Law No. 23/2007, available at: http://www.portaldogoverno.gov.mz/Legisla/legisSectores/trabalho/Lei_do_Trabalho.pdf (Portuguese).

¹⁰ Law No. 8/2008, available at: <http://www.wlsa.org.mz/lib/pdf/LegislacaoProteccaoCrianca.pdf> (Portuguese).

¹¹ Law No. 8/2008, available at <http://www.wlsa.org.mz/lib/pdf/LegislacaoProteccaoCrianca.pdf> (Portuguese).

¹² Law No. 6/2008, available at: <http://www.wlsa.org.mz/lib/pdf/LegislacaoProteccaoCrianca.pdf> (Portuguese).

¹³ UN Committee on the Rights of the Child, *Concluding Observations on the second periodic report of Mozambique*, CRC/C/MOZ/CO/2, 4 November 2009, paras. 9-10, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMOZ%2fCO%2f2&Lang=en.

is extremely limited.¹⁴ To the extent that cases are available, it is usually by way of scholarly commentary or press conferences.¹⁵

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

The Law for the Promotion and Protection of the Rights of the Child provides that all children are guaranteed access to the court system.¹⁶ Children have the right to be represented in court by their parents or, in certain cases, by their grandparents or other relatives up to the 4th degree.¹⁷ If no such person is available, the court may designate a guardian from among the persons that care for the child, or that have “demonstrated affection” for the child.¹⁸

Parents have the primary right to represent a child’s interest, in addition to the administration of their property.¹⁹ However, this right is limited in the case of (i) acts that a child may freely undertake in his individual capacity and (ii) the administration of property that does not relate to the child’s parents.²⁰ In the case of a conflict of interest between parent and child, where the resolution depends on public authority, children may be represented by one or more guardians appointed by the court.²¹

Persons eligible to act as court-appointed guardians may not include those persons who:

- i. are less than 25 years old;
- ii. have a serious physical or psychological incapacities;
- iii. have negative social behavior or do not follow a familiar lifestyle;
- iv. have been prohibited or suspended from exercising parental rights;
- v. have been removed or suspended from the exercise of other guardianship as a result of failing to comply with their obligations in such capacity;
- vi. have a legal proceeding pending with the child or the child’s parents within the past five years; or
- vii. have been excluded by the parents of the child from exercising guardianship rights.²²

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

¹⁴ Open Society Foundation, *Mozambique: Justice Sector and the Rule of Law*, at p. 62, available at: <http://www.afrimap.org/english/images/report/Mozambique%20Justice%20report%20%28Eng%29.pdf>.

¹⁵ *Id.* at 62–63.

¹⁶ Law for the Promotion and Protection of the Rights of the Child, art. 93, §1.

¹⁷ Family Law, arts. 282, §2, and 340.

¹⁸ *Id.* art. 341.

¹⁹ *Id.* art. 284, §2.

²⁰ *Id.* art. 287, §1; *see also id.* art. 296 (providing additional restrictions on parents’ administration of a child’s property).

²¹ *Id.* art. 287, §2.

²² Family Law, art. 344.

Under the Family Law, children's legal rights are enforced by their parents until they attain the age of majority or until they are otherwise emancipated from parental control.²³ Thus a representative (either family member or court-appointed) would be required to bring a case on behalf of a child.

C. In the case of infants and young children, how would cases typically be brought?

Parents have a right to represent the legal interest of their children until they reach the age of majority.²⁴ Such cases are brought as described below in Part III.A.

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

In the Juvenile Court, legal aid is available to the legal guardian of a child to assist with acquiring representation where the child would otherwise be unrepresented.²⁵

The Mozambican Bar Association has recently established Institute for Access to Justice,²⁶ however it is unclear how this body is operating.

In general, legal aid is available to those who qualify through the Institute for Legal Representation and Assistance (*Instituto de Patrocínio e Assistência Jurídica*, or IPAJ),²⁷ including where parents or relatives are engaged in representing their children under the law, however, obtaining it is not straightforward. Applicants are required to purchase a relatively costly poverty certificate. Once obtained, the poverty certificate may be used to cover all court fees, regardless of whether the case is civil or criminal in nature; however, in practice, courts often refuse to accept such certificates. As a result, even where an individual in need of legal aid undertakes the expense to acquire a poverty certificate, they may be precluded from the benefits provided by the poverty certificate where the court refuses to accept it. In addition, the IPAJ has been criticised for numerous reports of fraud and financial crimes, in addition to complaints of poor quality legal assistance.²⁸

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

Research did not identify any further limitations or conditions.

²³ *Id.* art. 283.

²⁴ *Id.* arts. 283 and 284.

²⁵ Law of the Legal Organisation of Minors, art. 18.

²⁶ All Africa website, *Mozambique: Bar Association Sets Up Legal Aid Body*, available at: <http://allafrica.com/stories/201409030337.html>.

²⁷ Law for the Promotion and Protection of the Rights of the Child, art. 93, §2. This right is universally guaranteed pursuant to article 22 of the Judicial Organisation Law.

²⁸ *Civil Society Report on the implementation of the ICCPR in Mozambique*, October 2013, at paras. 95-103, available at: <http://www.bibliopedant.com/UmOqEPqEzIpfuDo2URAr>.

III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Civil claims may be brought by any affected party, where such party is an individual or legal entity (acting in its own defense or representing an affected party) that has standing to come before the court.²⁹ The affected party (or its representative) must file a complaint with the relevant court, which:

- i. designates of the particular court to which the claim is submitted;
- ii. identifies each party, including name, address, and profession, if possible
- iii. indicates the type of proceeding undertaken;
- iv. specifies facts and legal reasons supporting the claim;
- v. formulates a request for relief; and
- vi. declares the value of the claim (where relevant).³⁰

The Constitution allows the Ombudsman to review cases submitted to him and make recommendations to the appropriate offices to correct or prevent any illegality or injustice,³¹ but these recommendations are non-binding. However, the office of the Ombudsman is seriously under-resourced and under-staffed and its recommendations are occasionally not followed.³²

The National Human Rights Commission was established in 2012 pursuant to the adoption of Law 33/2009 in 2009 with the mandate to promote and defend human rights.³³ However, research did not reveal further information about the powers of the Commission to address complaints of human rights violations.

Individuals, including child victims, their parents or legal representatives, groups, or NGOs recognised by the African Union may submit complaints (known as “communications”) to the African Committee of Experts on the Rights and Welfare of the Child (“African Committee”) about violations of the African Charter on the Rights and Welfare of the Child (“African Children’s Charter”).³⁴ All available domestic remedies must have been exhausted before

²⁹ Code of Civil Procedure (*Código de Processo Civil*), arts. 5–25 (describing the requirements for a party to come before the court) and 26 – 30 (describing standing requirements). If a party is not a legal entity, it may be represented by a representative that is a legal entity. *See id.* art. 10.

³⁰ *Id.* art. 467.

³¹ Constitution, art. 259.

³² All Africa news website, *Mozambique: Ombudsman Protests At Lack of Premises and Staff*, 29 April 2014, available at: <http://allafrica.com/stories/201404300285.html>.

³³ UN Mozambique website, *Human Rights Commission in Mozambique Presented Publicly*, available at: <http://www.mz.one.un.org/por/Noticias/Noticias2/Human-Rights-Commission-in-Mozambique-Presented-Publicly>.

³⁴ African Charter on the Rights and Welfare of the Child (“African Children’s Charter”), Article 44, available at: <http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acrwc/acrwc-charter-full-text/>. For more information about communications, see: <http://acerwc.org/the-committees-work/communications/>.

bringing a case to the African Committee.³⁵ The complaint must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, and whether or not the complainant wishes to remain anonymous and the reasons for this.³⁶ The African Committee will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.³⁷

Individuals, groups or NGOs may submit complaints (known as “communications”) to the African Commission on Human and Peoples’ Rights (“African Commission”) about violations of the African Charter on Human and Peoples’ Rights (“African Charter”).³⁸ All available domestic remedies must have been exhausted before bringing a case to the African Commission.³⁹ The complaint must include, amongst other things: the name of the person filing it or, in the case of an NGO, the name of the legal representative; whether or not the complainant wishes to remain anonymous and the reasons for this; and the name of the victim, in a case where he/she is not the complainant.⁴⁰ The African Commission will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.⁴¹ If the case relates to serious or massive human rights violations or if the Commission considers that the State is unwilling to comply with its recommendations in the case, the Commission may refer the complaint to the African Court on Human and Peoples’ Rights.⁴²

B. What powers would courts have to review these violations, and what remedies could they offer?

The Civil Code grants courts the right to issue a judgment that does not exceed the scope of relief requested by the claimant.⁴³

³⁵ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at: <http://acerwc.org/the-committees-work/communications/>.

³⁶ War Resisters’ International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Committee of Experts on the Rights and Welfare of the Child: communication procedure’, 2012, available at: <http://co-guide.org/mechanism/african-committee-experts-rights-and-welfare-child-communication-procedure>.

³⁷ Ibid.

³⁸ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

³⁹ Ibid., Article 56(5).

⁴⁰ Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rule 93, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010/>.

⁴¹ War Resisters’ International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Commission on Human and Peoples’ Rights: communication procedure’, 2012, available at: <http://co-guide.org/mechanism/african-commission-human-and-peoples-rights-communication-procedure>.

⁴² Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights, Article 5, available at: <http://www.achpr.org/instruments/court-establishment>; Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rules 84(2) and 118, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010>.

⁴³ Civil Code (*Código Civil*), art. 661.

- C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Typically, a complaint must identify the affected party or parties, including names, domicile or headquarters, and where possible, profession and employment location.⁴⁴ However, generic pleading (*pedido genérico*) is permitted where:

- i. the subject of the claim is either a universal fact or right;
- ii. it is not yet possible to definitively determine the consequences of facts giving rise to the claim in accordance with the law; or
- iii. the fixing of the amount in controversy is dependent upon the preparation of accounting information or any other act that cannot be performed by the claimant.⁴⁵

- D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Article 81 of the Constitution provides for the right of “popular action” (*direito de acção popular*), which allows for individuals and groups of citizens to claim compensation and file suit in defense of public health, consumer rights, environmental conservation, cultural heritage and public property.⁴⁶ However, there is currently no implementing legislation that would permit citizens to enforce these rights and attempts to rely on this provision have been unsuccessful.⁴⁷

Nonetheless, a group of 2000 citizens can submit a request for a review of the constitutionality of laws and legality of all other legislative acts and proposed referenda to the Constitutional Council.⁴⁸

- E. Are non-governmental organizations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Research did not identify any legislative provision that permits non-governmental organisations to bring or intervene in cases.

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

- A. Venue: In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

The structure of the court system is governed by the 2007 Law of Judicial

⁴⁴ Code of Civil Procedure, art. 467.

⁴⁵ Code of Civil Procedure, art. 471, §1.

⁴⁶ Constitution, art. 81.

⁴⁷ *Mozambique: Justice Sector and the Rule of Law*, at p. 125.

⁴⁸ Globalex, *Update: Republic of Mozambique – Legal System and Research*, available at: <http://www.nyulawglobal.org/globalex/Mozambique1.htm#III133>.

Organisation (*Lei de Organização Judiciária*), dividing the court system into district (local) courts, provincial (regional) courts, appellate courts (one located in each of the northern, central and southern regions) and a Supreme Court (located in Maputo).⁴⁹ Under the Judicial Organisation Law, the district courts have jurisdiction over questions regarding family relationships and proceedings regarding minors.⁵⁰

The judicial courts include the Supreme Court (*Tribunal Supremo*) located in the capital city of Maputo, the Provincial Courts (*Tribunais Judiciais de Província*) located in each of the 11 provinces, and the District Courts (*Tribunais Judiciais de Distrito*) located in 93 of 128 districts. In addition, the Judicial Organization Law (*Lei da Organização Judiciária*) provides for the creation of Superior Appellate Courts (*Tribunais Superiores de Recurso*).⁵¹ However, as of September 2012, only the appellate court in Maputo (serving the southern region of the country) was formally functioning.⁵²

In addition, localised neighborhood and village community courts (*tribunais comunitárias*) are widespread in Mozambique, and provide easier access to justice for minor civil and criminal disputes than the judicial court system.⁵³ Although recognised under the Constitution as an appropriate means of dispute resolution,⁵⁴ such community courts are not formally linked to the judicial court system.⁵⁵ As a result, community courts are not required to base decisions on laws and regulations applicable to the judicial court system, and instead tend to operate based on traditional customs.⁵⁶

In addition, the 2004 Constitution provides for an Administrative Court in addition to the Supreme Court and other courts of justice,⁵⁷ with the authority to adjudicate the legality of administrative acts and the application of rules and regulations issued by the Public Administration.⁵⁸ In a 2012 ruling, the Administrative Court clarified its jurisdiction over human rights matters and a legal mandate to advance the protection of these rights.⁵⁹

⁴⁹ Judicial Organisation Law, art. 29.

⁵⁰ Judicial Organisation Law, art. 84.

⁵¹ Law No. 24/2007, art. 114 (providing for the creation of three appellate courts, in each of Maputo, Beira and Nampula) available at: <http://www.ts.gov.mz/Media/Files/Boletim-da-Republica-I-SERIE-Numero-33> (Portuguese). The appellate courts operate on an intermediate level between the provincial courts and the Supreme Court. *Id.* art. 115.

⁵² The other two appellate courts (in Beira and Nampula, which serve the northern and central regions of the country) “are still deprived of basic conditions” for effective operation, suffering from insufficient funding, faulty technology and poor infrastructure. See *Tribunais Superiores de Recurso Sem Meios Para Funcionar*, SAPO (MOÇAMBIQUE), (Mar. 1, 2012) available at <http://noticias.sapo.mz/aim/artigo/397501032012201304.html> (Portuguese).

⁵³ *Mozambique: Justice Sector and the Rule of Law*, at p. 127.

⁵⁴ Constitution, art. 223 §2.

⁵⁵ *Mozambique: Justice Sector and the Rule of Law*, at pp. 38–39, 127.

⁵⁶ *Civil Society Report on the implementation of the ICCPR in Mozambique*, at paras. 101–02.

⁵⁷ Constitution, art. 223, §1.

⁵⁸ *Id.* art. 228.

⁵⁹ Open Society Initiative for Southern Africa, *New Hope for Human Rights Litigation in Mozambique*, (! August 2012), available at <http://www.osisa.org/law/blog/new-hope-human-rights-litigation-mozambique>.

A specialised Juvenile Court (*Tribunal Judicial de Menores*) was created in the capital city of Maputo, but it is the only one of its kind in the country.⁶⁰ Elsewhere, matters related to child rights are handled by the judicial courts or community courts. The lack of additional juvenile courts causes “serious difficulties to the jurisdictional protection of the child’s rights, mainly due to the lack of judges’ specialisation on child’s rights, with the consequent weak quality of the judicial decisions and the delay of the legal procedures of processes involving juvenile issues.”⁶¹ Furthermore, Article 3 of the Law 8/2008 on the Tutelar Organisation of Minors provides that the Juvenile Court judges in equity, basing itself on principles of "common sense" and is not subject to the criteria of strict legality.

- B. Legal aid / Court costs: Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

Judicial costs in Mozambique are very high relative to income, and the calculation of such costs and related fees is often unclear.⁶²

For information about the availability of legal aid, please see part II.D.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Some civil society organisations provide free legal aid including the Mozambican Human Rights League (*Liga Moçambicana dos Direitos Humanos*), the Women’s Association for Law and Development (*Associação Mulher Lei e Desenvolvimento*), the Mozambican Association for Women Lawyers (*Associação Moçambicana das Mulheres de Carreira Jurídica*), Women and Law in Southern Africa and the Rural Organisation for Mutual Assistance (*Organização Rural de Ajuda Mútua*), in addition to services provided by legal clinics at certain law facilities, including the University of Eduardo Mondlane, the Catholic University of Mozambique, and the Higher Polytechnic and University Institute.⁶³

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

⁶⁰ *Mozambique: Justice Sector and the Rule of Law*, at p. 38.

⁶¹ *Report of the Civil Society on the Implementation of the Convention of the Children’s Rights*, March 2009, at p. 19, available at: https://www.crin.org/docs/Mozambique_CoalitionCRC_NGO_Report.pdf.

⁶² *Mozambique: Justice Sector and the Rule of Law*, at pp. 123–24.

⁶³ *Mozambique: Justice Sector and the Rule of Law*, at pp. 110–11.

In civil cases, the statute of limitations is 20 years in most cases,⁶⁴ but is reduced to five years in the cases of: annual rent, single rent payments, overdue alimony and others.⁶⁵

In criminal cases, the Criminal Code provides for the following time limits:

- i. 15 years for crimes of high punishment (*pena maior*);
- ii. five years for infractions with correctional remedies or security measures; and
- iii. three years for misdemeanors.⁶⁶

E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

1. *Permitted evidence*: In criminal cases subject to the jurisdiction of the judicial courts, testimonial evidence is permitted by persons indicated by a participant, victim or accused party, in addition to that of any other parties that the judicial authority or criminal police body, insofar as such evidence is intended to contribute to the discovery of the truth.⁶⁷

In the Juvenile Court, evidence is presented in a court session as designated by the judge, who decides on the admission of relevant evidence.⁶⁸ Evidence is also reduced to writing, but the judge may register in the case facts that have been determined, if convenient.⁶⁹

2. *Evidence presented by children*: In criminal cases, testimonial evidence of persons under 16 may only be obtained by the chief justice based on questioning prepared by the public prosecutor or defense counsel.⁷⁰ In civil cases, children under the age of seven may not be deposed for the purpose of obtaining testimonial evidence.⁷¹ However, children over the age of fourteen may be required to be deposed where the deposition has a limited value of confession only.⁷²

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

The court system is subject to serious delays because of significant backlog of cases.⁷³ For example, the experience of many attorneys demonstrates that criminal proceedings may require two to five years to reach trial, and between ten and twenty years for appeal.⁷⁴ In civil cases, attorney experience

⁶⁴ Civil Code, art. 309.

⁶⁵ Civil Code, art. 310.

⁶⁶ Criminal Code, art. 125.

⁶⁷ Criminal Code, art. 242.

⁶⁸ Law of Judicial Organisation, art. 132.

⁶⁹ *Id.* art. 78.

⁷⁰ Criminal Code, art. 516.

⁷¹ Code of Civil Procedure, art. 617.

⁷² *Id.* art. 559.

⁷³ *Mozambique: Justice Sector and the Rule of Law*, at p. 13 and All Africa website, *Mozambique: Huge Backlog of Cases in Court System*, available at: <http://allafrica.com/stories/201303030209.html>.

⁷⁴ *Mozambique: Justice Sector and the Rule of Law*, at p. 108.

shows that proceedings may require two to four years to reach trial, and between nine to eleven years for appeal.⁷⁵

G. Appeal. What are the possibilities for appealing a decision to a higher court?

In civil cases, the right to appeal is determined based on the amount in dispute or the nature of the case. Cases below a certain threshold that have been submitted to the district judicial courts cannot be appealed in the provincial courts, and the same applies to cases below a certain threshold that were admitted to a provincial court for appeal to the Supreme Court.⁷⁶ These limitations do not apply to cases concerning family, intellectual rights and criminal laws. In practice, however, most cases are not appealed as a result of financial constraints.⁷⁷

Specifically, the Law of Judicial Organization provides that a single appeal is permitted for decisions rendered by the judicial courts (unless otherwise permitted or prohibited by law). In addition, decisions rendered in community courts may be appealed to district courts.⁷⁸ Questions of law may be appealed twice, with certain decisions rendered by the provincial courts being appealable to the Supreme Court.⁷⁹

All civil decisions rendered by the Juvenile Courts on "factual matters" can be appealed once, except where the law provides otherwise,⁸⁰ in front of the Supreme Tribunal.⁸¹ Concerning criminal matters, only the decisions that, definitively or provisionally, concern the application, alteration or cessation of criminal prevention measures can be appealed.⁸² In this case, the appeal can be brought by the minors curator or the child's representative.⁸³ Representation by a lawyer is mandatory in the appeal phase.⁸⁴

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Mozambique has a civil law legal system, in which case law has no value of binding precedent,⁸⁵ therefore, the impact of a negative or positive decision will be limited. In addition, the impact of a decision on the development of the law, to the extent that a decision results in a change to existing legislation, may be delayed or otherwise weakened by the limited availability of public information regarding jurisprudence in Mozambique.⁸⁶

⁷⁵ *Mozambique: Justice Sector and the Rule of Law*, at p. 126.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Judicial Organisation Law, art. 86.

⁷⁹ Judicial Organisation Law, art. 19.

⁸⁰ Law 8/2008 on the Tutelar Organisation of Minors, Article 9.

⁸¹ *Ibid.*, Article 60, referring to the Civil Procedure Code, Article 712.

⁸² Law 8/2008 on the Tutelar Organisation of Minors, Article 84.1.

⁸³ *Ibid.*, Article 84.2.

⁸⁴ *Ibid.*, Article 91.

⁸⁵ TRREE, *Introduction to the Legal System of Mozambique*, available at: <http://elearning.trree.org/mod/page/view.php?id=167>.

⁸⁶ *Mozambique: Justice Sector and the Rule of Law*, at p. 59 ("Availability of legislation and

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

Although the Constitution provides that court decisions are binding on individuals and legal entities,⁸⁷ the government has been criticised for a “widespread lack of executive compliance with the rule of law” in addition to allegations of obstruction of justice in certain cases.⁸⁸ Similarly, individuals often fail to comply with court decisions in civil claims, since enforcement is not regularly monitored.⁸⁹

An additional enforcement concern is the lack of independence of the court system in Mozambique. Mozambique is subject to an “inevitable legacy of a long-standing political tradition of centralised state authority[.]”⁹⁰ This raises the concern that judges—particularly at the district level—are vulnerable to unwanted influence from government as a result of a lack of resources and limited experience, among others difficulties.⁹¹ As a result, where a positive decision may not reflect favorably on the government, a judge or judges may face certain difficulties or pressures in attempting to render a positive decision.

- V. **Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

A. *Legal pluralism*: Article 212 of the Constitution recognises legal pluralism, whereby “the law may establish institutional and procedural mechanisms for links between the courts and other fora whose purpose is the settlement of interests and the resolution of disputes.” This reflects the coexistence of informal and traditional methods of justice with the formal court system, where the informal system is not subject to the same standards, law or procedures as the formal system. Because there is no system of precedent in the informal courts, in addition to limited enforcement mechanisms, violations of human rights standards provided in the Constitution and implementing legislation have occurred and will likely continue to occur without remedy.⁹² As regards the legal education process, “the plural legal systems operating in Mozambique are almost totally ignored, with very limited reference to customary law[,]” resulting in legal training that is not fully aligned with the realities of legal practice.⁹³

B. *Conflicting definitions of the child*: While the CRC defines a child as a person under 18 years of age, Mozambican legislation defines a minor

jurisprudence in Mozambique is extremely poor, to the extent that it constitutes a serious impediment to judges, lawyers and court staff in fulfilling their duties.”)

⁸⁷ Constitution, art. 276.

⁸⁸ *Mozambique: Justice Sector and the Rule of Law*, at pp. 65–66.

⁸⁹ *Mozambique: Justice Sector and the Rule of Law*, at p. 135.

⁹⁰ *Mozambique: Justice Sector and the Rule of Law*, at p. 74.

⁹¹ *Id.*

⁹² *Mozambique: Justice Sector and the Rule of Law*, at p. 131.

⁹³ *Mozambique: Justice Sector and the Rule of Law*, at p. 93.

differently according to the relevant legislation. For example, the 1966 Civil Code defines a minor (child) as a person under 21.⁹⁴ Conflicting definitions of the child may, in practice, lead to situations where it is unclear whether or not an individual may exercise his or her rights as a “child” or as an “adult.”

- C. *Limited availability of qualified lawyers*: as of 2005, Mozambique had only 313 lawyers admitted at bar, the majority of whom were located in the capital city of Maputo.⁹⁵ The OAB’s website indicates that, as of 2013, there were 1,063 lawyers admitted at bar.⁹⁶ Although this number is increasing as a result of new legal education programs offered by private universities, the legal needs of the population continue to be underserved.⁹⁷

This report is provided for educational and informational purposes only and should not be construed as legal advice.

⁹⁴ Civil Code, art. 122.

⁹⁵ *Mozambique: Justice Sector and the Rule of Law*, at p. 89.

⁹⁶ Mozambique Bar Association, *Lawyers Admitted to the Mozambique Bar* (2013), available at <http://www.oam.org.mz/advogados-inscritos-na-ordem> (Portuguese).

⁹⁷ *Mozambique: Justice Sector and the Rule of Law*, at pp. 89–90.