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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## Visit to Mozambique

### **Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity\* \*\***

#### *Summary*

In his report, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity provides an overview of the enjoyment of human rights by lesbian, gay, bisexual and trans populations in Mozambique, drawing on information received in the context of his visit from 3 to 10 December 2018. He assesses the implementation of existing national and international human rights standards to combat violence and discrimination based on sexual orientation and gender identity. He makes recommendations to further the fight against violence and discrimination in Mozambique, highlights remaining gaps, and identifies good practices that might be useful in the African context and for the community of nations in general.

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\* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.

\*\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



## **Annex**

### **Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his visit to Mozambique**

#### **I. Introduction**

1. The present report examines the situation of violence and discrimination based on sexual orientation and gender identity in Mozambique, drawing on information received by the Independent Expert in the context of his visit to the country from 3 to 10 December 2018. The purpose of his visit was threefold: to identify opportunities and challenges surrounding social inclusion in a country firmly committed to the furtherance of the goal of leaving no one behind, within the framework of the 2030 Agenda for Sustainable Development; to assess the impact of the 2015 same-sex decriminalization process on social perceptions and State action; and to draw from the experiences of Mozambique, a country with an extraordinary history of confluence of traditions and plurality of legal orders.
2. The Independent Expert worked in situ in Maputo and Nampula, where he met with representatives of the executive, legislative and judicial branches, local authorities, the National Human Rights Commission and with the Ombudsman. The Independent Expert wishes to thank the Government of Mozambique for the invitation to conduct the visit and for its excellent hospitality and cooperation during the visit. For many of the interlocutors he met, his visit was the first opportunity to have an institutional discussion about the human rights problematic faced by lesbian, gay, bisexual and trans persons, and he is thankful for the notable openness, respect and candour with which all discussions were held, as well as the commitment of the State to thoughtful attention to these matters in the future.
3. The Independent Expert also had the opportunity to speak at great length with leaders and community members of the Islamic faith in Nampula and leaders of other religious denominations in Maputo, as well as with traditional healers in the north of the country. The Independent Expert is always encouraged when he speaks with prominent religious and community leaders: while divergent views are identified in relation to some specific matters, it is at all times possible to agree on the fact that violence and discrimination on the basis of sexual orientation and gender identity are never justified and must be condemned and discouraged. The Independent Expert was also thankful to hear, from all interlocutors, about their willingness to continue a conversation about learning how to create spaces of peaceful and respectful coexistence. When creating its resolution 32/2, the Human Rights Council requested that dialogue be one of the principles for the mandate, and he was delighted to have been able to implement this approach so actively during this visit.
4. The Independent Expert also benefited from the cooperation and indispensable support of Lambda, the leading lesbian, gay, bisexual and trans organization in Mozambique, the leaders and members of which showed great generosity in sharing their knowledge and opinions. The organization facilitated contact with dozens of members of the community who, in turn, shared their lived experiences. In addition, he had the privilege of meeting with a number of civil society organizations working in areas that have significant intersections with the concerns of his mandate. He also met with the United Nations country team, as well as members of the diplomatic corps.
5. The Independent Expert wishes to thank everyone he met and expresses his gratitude for their readiness to engage in an open and constructive dialogue. He is also profoundly grateful to the lesbian, gay, bisexual and trans people who shared their stories with him. Lastly, he would like to thank the United Nations Country Team for its support before and during the visit.

## II. Context and background

6. Mozambique became independent in 1975, after almost five centuries as a Portuguese colony. Multiparty elections took place for the first time in 1994, following 15 years of civil war. Political stability was challenged when the armed conflict between the Government and the opposition party reignited in 2013 and the opposition refused to recognize the result of the 2014 elections. A ceasefire was achieved in 2016 and, in February 2018, a peace agreement was concluded in the form of a Constitutional review. According to the 2018 Constitutional amendment, the political parties that win provincial parliamentary elections will be able to select a provincial governor, subject to approval by the President. The country is divided into 11 provinces, which are headed by governors in charge of ensuring the implementation of government policies at the provincial level and exercising administrative supervision over local authorities.

7. The economy of the country was hit by the disclosure in 2016 of nearly US\$ 2 billion of hidden debt, which had been contracted without recourse to the required legal procedures. This contributed to rapid inflation and decreasing gross domestic product (GDP). After 18 years of average annual real GDP growth above 7 per cent, the economic performance of Mozambique has slowed down since 2015, falling to 3.3 per cent in 2017. Mozambique ranks 142 out of 176 countries in the Transparency International Corruption Perceptions Index and 23 out of 54 in the Ibrahim Index of African Governance.

8. The hidden debt case has severely undermined the confidence of development partners. It led to the suspension of budget support in 2016 and unravelled the aid coordination framework. Official development assistance is increasingly channelled through direct project investment, and there is a progressive shift in allocations in favour of direct support to non-State actors. The health sector is financed almost entirely by global initiatives.

9. Mozambique faces pervasive poverty and inequality, particularly in rural areas where most of the population lives.<sup>1</sup> In 2018, Mozambique was ranked 180 out of 187 countries in the human development index.<sup>2</sup> In 2017, the World Bank estimated that 62.9 per cent of Mozambicans lived on less than \$1.90 per day, with the per capita gross national income falling from \$620 in 2014 to \$420 in 2017.<sup>3</sup> More than 70 per cent of Mozambicans are estimated to be poor, with substantial variations based on region and province.<sup>4</sup>

10. High illiteracy and widespread lack of access to education are serious barriers to inclusion, particularly in rural areas and in the northern provinces.<sup>5</sup> Between 2006 and 2016, the adult literacy rate was 50.6 per cent and in 2017, average life expectancy at birth was 58.9 years.<sup>6</sup> Since 2010, the number of new HIV infections has decreased by 24 per cent and AIDS-related deaths by 46 per cent.<sup>7</sup> HIV prevalence, however, remains an issue of great concern.

11. Some groups and individuals in Africa express the opinion that diversity in sexual orientation and gender identity is a phenomenon that is foreign to the continent, a fabrication or import from other areas of the world. During his visit to Mozambique, the Independent Expert met with gay men, lesbian women, and bisexual and trans men and women, as well as other gender-diverse persons. All of them shared with him their lived experiences of knowing, for as long as they could remember, that they were “different” from the prevailing norm and knowing that this awareness was connected to sexual desire

<sup>1</sup> See African Development Bank, *Mozambique Country Strategy Paper 2018–2022* (2018).

<sup>2</sup> See United Nations Development Programme (UNDP), *Human Development Indices and Indicators: 2018 Statistical Update* (New York, UNDP, 2018).

<sup>3</sup> See <https://data.worldbank.org/country/mozambique>.

<sup>4</sup> See Oxford Poverty and Human Development Initiative, “Mozambique: Country briefing December 2018”, University of Oxford, 2018.

<sup>5</sup> See African Development Bank, *Mozambique Country Strategy Paper 2018–2022*.

<sup>6</sup> See UNDP, *Human Development Indices and Indicators: 2018 Statistical Update*.

<sup>7</sup> See Joint United Nations Programme on HIV/AIDS (UNAIDS), “Country overview: Mozambique”. Available at [www.unaids.org/en/regionscountries/countries/mozambique/](http://www.unaids.org/en/regionscountries/countries/mozambique/).

and gender identity, as far back as their memory could take them. They knew, they said, that these features were as fundamental to their identity as their personality, the shape of their heart or the colour of their eyes. Many of them said they had these feeling before they even knew or understood that other persons in the world also had them, before they had any exposure to persons outside their community, their region and certainly the country. Lesbian, gay, bisexual and trans people exist in every single corner of the world. To say otherwise is not only delusional: it fuels stigma, discrimination and hatred. As one older lady in a faith-based community noted, with great wisdom:

We, mothers, we always know. We see our children; we know what makes them smile; what makes them dream. So we always know. But if our son likes a boy or our daughter likes a girl, we are terrified for them because we know that in their life they will suffer too much, and we are so ashamed because the neighbours will criticize us. So we try to change them, to protect them and to protect ourselves.

12. The Independent Expert did not receive reports of massive, systematic or flagrant discrimination or physical violence against persons on the basis of their sexual orientation or gender identity in Mozambique. According to many State and non-State actors, this can be attributed to high levels of tolerance within Mozambican society and to the value attached to consensus-building by all societal actors. A commendable level of respect for life and personal integrity exists, which is remarkable in the case of diversity in sexual orientation and gender identity given that Mozambique is one of the countries in which criminalizing laws were imposed by colonial powers. This high level of tolerance has a positive impact on the forbearance of lesbian, gay, bisexual and transgender people as members of the society who deserve protection and equality of rights. Therein lies an extraordinary capital on which Mozambican society will need to rely in order to make progress in this area. As detailed below, the social ownership of tolerance is reinforced by Constitutional and legal standards.

13. The social environment does not, however, encourage lesbian, gay, bisexual or trans people to live openly and freely, embracing their sexual orientation or gender identity, and the Independent Expert found no evidence that State policies acknowledge and embrace these essential aspects of persons living under its jurisdiction. On the contrary, State agents consistently expressed the view that issues related to sexual orientation and gender identity are perceived very negatively among the general population and must be handled with great care and only progressively, if at all. The Independent Expert is of the view that this perception must be challenged. During his visit, every single person interviewed, from religious leaders to political authorities and civil society activists, stated that no reason can ever justify violence and discrimination on the basis of sexual orientation and gender identity. This observation is consistent with an opinion poll conducted in the region that shows that Mozambique is among the most tolerant countries in Africa with regard to lesbian, gay, bisexual and trans people,<sup>8</sup> with national surveys showing that more than 60 per cent of Mozambicans believe that lesbian, gay, bisexual and trans people should enjoy the same rights as others,<sup>9</sup> and that 85 per cent oppose violence against them.<sup>10</sup>

14. The Independent Expert found that the public policy agenda in this regard is hindered by a lack of awareness about diverse sexual orientations and gender identities, including the fact that homosexuality, lesbianism, bisexuality and gender diversity are inherent traits of human nature and are not lifestyles that can be chosen, promoted or taught. For example, a lawmaker at the National Assembly said that: “Homosexuality is not forbidden in Mozambique, but it is also not permitted.” In other words, the State cannot – and will not – take measures that can be seen as promoting the fact that some people are gay and, by extension, lesbian, bisexual or trans. Education for public officials is

<sup>8</sup> See Boniface Dulani, Gift Sambo and Kim Yi Dionne, “Good neighbours? Africans express high levels of tolerance for many, but not for all”, Afrobarometer Dispatch No. 74, 1 March 2016.

<sup>9</sup> See International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), *Minorities report 2017: attitudes to sexual and gender minorities around the world* (Geneva, ILGA, 2017).

<sup>10</sup> See Lambda, “Attitudes towards homosexuality in Maputo, Beira and Nampula” (2017). Available at <https://spark.adobe.com/page/1whcHk1ZoykJO/>.

indispensable to dispel such misconceptions and further the human rights of lesbian, gay, bisexual and trans people.

15. The Mozambican equation has been singularly successful at protecting lesbian, gay, bisexual and trans people from the levels of violence that they face in other corners of the world. Yet this social pact comes at a price: inequality and emotional captivity. The tacit social agreement is not to attack lesbian, gay, bisexual or trans people as long as their true nature remains invisible. However, in accordance with their human rights, every lesbian, gay, bisexual and trans person is entitled to be able to live free and equal, openly and proudly.

### III. Legal, institutional and public policy framework

#### A. Legal framework

16. Mozambique has ratified most core international and regional human rights treaties,<sup>11</sup> without reservations, has accepted the individual complaints procedures under two optional protocols and the inquiry procedure under three treaties.<sup>12</sup> It has not yet ratified the International Covenant on Economic, Social and Cultural Rights or the International Convention for the Protection of All Persons from Enforced Disappearance.

#### The scourge of criminalization

17. Under the 1886 Penal Code imposed by the colonial power, Portugal, persons who were “usually engaging in vices against nature” could be sentenced to “security measures” that could include hard labour, internment in an asylum and debarment from professional activities.<sup>13</sup> The absence of a definition of such “vices” carried the risk that these provisions be used to criminalize same-sex relations.

18. In July 2014, the parliament of Mozambique approved Law No. 35/2014 removing articles 70 and 71.4 of the colonial-era Penal Code. This legal development was largely symbolic as there had been no documented reports of any prosecutions under these articles since Mozambique gained independence in 1975. The revised Penal Code came into force in June 2015.

19. The process of decriminalization took place in the context of some regressive laws being adopted by other African countries. In 2014, the former President of Mozambique, Joaquim Chissano, in his capacity as joint chairperson of the High-Level Task Force for the International Conference on Population and Development, sent an open letter to African leaders in 2014 calling for an end to all forms of discrimination, including on the basis of sexual orientation and gender identity, in which he stated that: “We can no longer afford to discriminate against people on the basis of age, sex, ethnicity, migrant status, sexual orientation and gender identity, or any other basis – we need to unleash the full potential of everyone.”

20. The Independent Expert welcomes all steps to end the criminalization of same-sex adult consensual relations. Even when legislation is not used actively to prosecute individuals, its removal goes beyond the symbolic: criminalization invariably contributes to stigma and discrimination, promotes social ostracism and often promotes corruption and violence against persons with diverse sexual orientations and gender identities. Removal of these provisions is a welcome action and the Independent Expert therefore unequivocally praises Mozambique for having accomplished that.

<sup>11</sup> See [www.achpr.org/instruments/](http://www.achpr.org/instruments/).

<sup>12</sup> See [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx).

<sup>13</sup> See arts. 70 and 71.4 of the Penal Code. The “security measures” listed in art. 70 include confinement in an insane asylum, confinement in a workhouse or agricultural colony, probation, taking a pledge of good conduct and/or disqualification from the practice of a profession.

21. At the same time, contrary to his preconception, the Independent Expert found no evidence of a connection between the process of decriminalization and a State vision aimed at combating violence and discrimination on the basis of sexual orientation and gender identity, or a concerted public policy to that effect. For example, during his dialogue with parliamentarians, the Independent Expert was told that the legislative change had nothing to do with homosexuality which, in their views, had never been illegal in Mozambique. They also indicated that it did not have anything to do with “permitting” homosexuality and that the decision to repeal the provisions related to the “vices against nature” had been grounded in the principle of equality and could not be equated with the “legalization” of homosexuality.

### **Legal framework in force**

22. The legislative framework is mostly silent with regard to the human rights of lesbian, gay, bisexual and trans people. There are no comprehensive anti-discrimination laws covering sexual orientation and gender identity, no hate crime or hate speech laws or other criminal justice mechanisms to aid in the prosecution of homophobic or transphobic crimes.

23. The Constitution of Mozambique nonetheless guarantees equality before the law (art. 35) and prohibits discrimination (art. 39). Although there is no explicit mention of sexual orientation or gender identity as prohibited grounds of discrimination, State officials with whom the Independent Expert met during the visit, including Supreme Court judges, consistently expressed the view that the Constitution should be interpreted as prohibiting all forms of discrimination, including discrimination based on sexual orientation and gender identity.

24. Furthermore, article 43 requires that the constitutional principles in respect of fundamental rights be interpreted and integrated in harmony with the Universal Declaration of Human Rights and the African Charter on Human and Peoples’ Rights. Equality and non-discrimination are fundamental human rights principles embodied in these two documents. These core principles are reaffirmed through the international human rights instruments, many of which contain open-ended provisions against discrimination,<sup>14</sup> and have been interpreted to include discrimination on the basis of sexual orientation and gender identity.<sup>15</sup> Similarly, in 2014, the African Commission on Human and Peoples’ Rights adopted its resolution 275 on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity. That resolution upholds the premise that sexual orientation and gender identity are grounds for protection from violence and other human rights violations, including discrimination, under the African Charter.

25. The Labour Law (No. 23/2007) is one law in Mozambique that specifically provides for protection from discrimination on the basis of sexual orientation. It specifically outlaws discrimination in the workplace based on sexual orientation, race and HIV/AIDS status (arts. 4 (1) and 108 (3)). Workers’ right to privacy is protected in articles 5 and 6, which prohibit employers from requesting personal information from employees, including with regard to workers’ intimate and personal life. The Independent Expert regrets, however, that there is no protection from discrimination on the basis of gender identity, as trans persons often bear the brunt of discrimination, especially in accessing decent work in the context of Sustainable Development Goal 8.

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<sup>14</sup> See, for example, International Covenant on Civil and Political Rights, art. 2 (1); International Covenant on Economic, Social and Cultural Rights, art. 2; Convention on the Rights of the Child, art. 2.

<sup>15</sup> For example, Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 27; *Toonen v. Australia* (CCPR/C/50/D/499/1992), para. 8.7; Committee on the Rights of the Child, general comments No. 4 (2003) on adolescent health and development in the context of the Convention, para. 6, and No. 9 (2006) on the rights of children with disabilities, para. 8; Committee against Torture, general comments No. 2 (2007) on the implementation of article 2, para. 21, and No. 3 (2012) on the implementation of article 14, paras. 32 and 39.

26. There is no specific law that allows transgender persons in Mozambique to change the gender marker in their identity documents. Article 77 of the Civil Registry Code (Law No. 12/2004) states that, unless otherwise provided, no alterations may be made to the details entered on the birth certificate once it has been signed. However, article 85 (1) (m) provides for amendments to be made to birth certificates when legal facts have resulted in alterations to some aspect of the identity or the civil status of the registered person. According to some sources, that article could potentially be used to request a change of gender marker in identity documents. The Independent Expert recalls that self-determined gender is a fundamental part of a person's free and autonomous choice in relation to roles, feelings, forms of expression and behaviours, and a cornerstone of the person's identity. The resulting obligation of States is to provide access to gender recognition (A/73/152, para. 21). Allowing trans persons to change their name and gender markers on identity documents would also be in line with the expectations of the majority of the Mozambican population, as highlighted in a 2017 survey.<sup>16</sup>

27. In December 2014, Mozambique adopted Law No. 35/2014, amending the legislative provisions protecting persons from domestic violence. While the previous law (No. 29/2009) had exclusively proscribed acts of domestic violence committed against women by men or persons with family ties to the victim, the new provision is gender-neutral, hence allowing for the protection of lesbian, gay, bisexual and trans people and partners in same-sex couples. Pursuant to article 245 of the Penal Code, everyone shall be protected from violence committed by spouses, ex-spouses, de facto partners, cohabiting partners, partners, ex-partners, girlfriends, boyfriends, ex-girlfriends, ex-boyfriends and family members. The Independent Expert commends this legislative change, but notes a lack of awareness among law enforcement personnel that may constitute an obstacle to the full implementation of the law.

28. Laws that focus on family values are heteronormative in nature. For instance, pursuant to article 7 of the Family Law (No.10/2014), marriage is the voluntary and singular union between a man and a woman. It therefore recognizes only heterosexual relationships. Article 53 (e) specifically provides that marriage contracted between two persons of the same sex has no legal effect. The same is true in the case of de facto unions, which are recognized only between a man and a woman (art. 202). The law allows single persons to adopt, as long as they meet the legal requirements, while couples or two individuals can adopt jointly only if they are married or in a valid de facto union (art. 393).

## **B. Institutional and public policy framework**

29. The Ministry of Justice, Constitutional and Religious Affairs is the main entity in charge of the coordination of human rights implementation, through its Directorate for Human Rights and Citizenship. The Directorate operates through an Interministerial Human Rights Working Group, involving the ministries of foreign affairs, education and human development, health, internal affairs and women and social action. A framework to monitor and evaluate the implementation of recommendations from the United Nations human rights bodies has been established by the Directorate. The monitoring committee of the Directorate meets on a quarterly basis and generates progress reports, providing a basis for the preparation of reports to United Nations and other human rights mechanisms.

30. There is no State policy for the promotion and protection of the human rights of lesbian, gay, bisexual and trans persons in Mozambique. Similarly, the National Gender Policy, approved in August 2018 by the Council of Ministers, is silent about diverse gender identities, despite the fact that it refers to masculinity as socially defined and not necessarily connected to the biological sex.

31. One of the very few measures for the promotion and protection of the human rights of lesbian, gay, bisexual and trans persons that the Independent Expert identified during his visit is the fact that the Ministry of the Interior is currently revising the handbook and

<sup>16</sup> See Lambda, "Attitudes towards homosexuality in Maputo, Beira and Nampula".

training package for police officers and, in consultation with civil society organizations, is incorporating elements related to sexual orientation and gender identity. It is also developing an electronic system to collect data on gender-based violence that will enable victims to self-identify. The Independent Expert is encouraged that those measures are being taken and calls for them to be developed further and for the Government to take ownership for them as part of a comprehensive strategy to combat violence and discrimination based on sexual orientation and gender identity.

32. In addressing any instance of violence and discrimination, the role of State institutions is crucial, and the absence of policies related to sexual orientation and gender identity has a severe impact on the ability of the State to address the phenomenon. From the chain of justice, through public health or social service, the eradication of violence and discrimination on the basis of sexual orientation or gender identity depends on the existence of public policies in public institutions. Such policies are indispensable in order to recognize the existence and particular challenges that lesbian, gay, bisexual and trans people face in any given context.

33. In Mozambique, the system tends to make sexual orientation and gender identity, a feature of human existence, invisible. As a consequence, statistics based on sexual orientation and gender identity are absent from every sector, and official statistics invariably misrepresent the size of affected communities and populations, the number of incidents concerning their particular problematic, which leads to prejudicial and inexact categorization of cases as a result of misidentification, concealment of the victim's true sexual orientation or gender identity, and underreporting. The systemic failure to collect data often results in the virtual invisibility of the concerns and abuses faced by lesbian, gay, bisexual and trans individuals.

34. In turn, the lack of data leads to the absence of adequate public policies to respond to their valid concerns and problematic. As a result, State agents are badly equipped to address the particular needs of these populations.

35. The key populations in the third and fourth HIV/AIDS National Strategic Plans (2010–2019) were men who have sex with men, commercial sex workers and their clients, users of intravenous drugs, prisoners and the migrant and displaced populations. While this is the only public policy in the country that appears to take into consideration increased vulnerability due to sexual orientation and the connected stigma and discrimination, the emphasis on behaviour (men who have sex with men) fails to capture all political and social aspects of the life of gay men and other communities and populations.

### **C. Access to justice**

36. During his visit, the Independent Expert had the opportunity to meet with representatives of the judiciary, including from the Supreme Court and the Provincial Judicial Court of Nampula. While the Independent Expert witnessed great receptiveness with regard to issues related to his mandate, he found no indication of a systematic approach or comprehensive policy to address violence and discrimination based on sexual orientation and gender identity.

37. Judges conveyed the perception that the judiciary remains influenced by some moral norms that may sometimes conflict with the law, and that it follows societal and social developments rather than leading social changes.

38. The Independent Expert notes with satisfaction that the Centre for Legal and Judicial Training has mainstreamed human rights and gender in the initial training and continuous learning courses given to legal professionals. He nevertheless regrets that the training courses do not incorporate elements related to violence and discrimination based on sexual orientation or gender identity and recommends that they be taken into consideration in the context of the current review of the curriculum. The Independent Expert also notes with concern that, due to budget cuts, the number of training courses delivered by the Centre has fallen. He wishes to underscore the importance of such training in order to dismantle barriers to effective access to justice by lesbian, gay, bisexual and trans persons.

## IV. Lives of lesbian, gay, bisexual and trans persons in Mozambique

39. Surveys show the clear rejection in Mozambique of violence based on sexual orientation and gender identity and a relatively high level of tolerance compared to neighbouring countries.<sup>17</sup> However, much remains to be done to reach substantial acceptance and full equality. For example, a 2017 survey conducted by a non-governmental organization in the cities of Maputo, Beira and Nampula showed that most parents would not accept their child if he or she came out, with 28 per cent of respondents in the city of Beira stating they would assault their child if he or she were gay.<sup>18</sup> The same survey also highlighted that two thirds of respondents would not want a gay president. Similarly, an unpublished study conducted in 2018 among Members of Parliament showed a discrepancy between an apparently positive discourse concerning lesbian, gay, bisexual and trans persons and parliamentarians' actual attitudes towards these populations.

### A. At the root of violence and discrimination

40. Lesbian, gay, bisexual and trans persons are affected differently and many intersecting factors have an impact on the risks of exclusion and marginalization that they face throughout their lives. Stigma is reinforced by deeply rooted cultural norms and beliefs about masculinity, femininity and the concept of the "traditional" family. Patriarchy and gender inequalities also have a negative impact on lesbian and bisexual women and tend to render them invisible. A 2017 survey found that socially construed perceptions of masculinity and femininity continue to prevail, leading to negative attitudes towards persons who depart from these expectations.<sup>19</sup> To protect their families and their communities from shame or owing to fear of losing social privilege or access to leadership positions, lesbian, gay, bisexual and trans persons tend to conceal their true identity. They end up living a life that matches social expectations but remains unfulfilling, or a double life, with a traditional family as a facade and having other sexual or emotional relationships in parallel.

41. People's attitudes in cosmopolitan areas tend to be more liberal than in rural areas, where conservative attitudes can be the norm. People living in rural communities often do not experience the same relative tolerance towards diverse sexual orientations and gender identities, and many prefer to migrate to urban areas to enjoy some freedom.

42. There is a significant gap in information and education with regard to sexual orientation and gender identity fuelling stigma and prejudice. The Independent Expert was bewildered by the lack of understanding about the concepts of sexual orientation and gender identity in all sectors of society. For instance, several interlocutors shared the perception that all gay men are in transition and will ultimately become women. There is also little knowledge about the fact that diverse sexual orientations and gender identities are normal variations of humankind, that they have always existed and that they are equally as valid as heterosexuality and cisgender identity.

43. These conceptions are so pervasive that they extend, astonishingly, to members of the lesbian, gay, bisexual and trans communities, who tend to integrate the negative views of wider society and internalize social prejudice, with consequences for their self-esteem and well-being.

<sup>17</sup> A 2016 Afrobarometer opinion poll found that 56 per cent of Mozambicans would welcome or not be bothered about having a homosexual neighbour. Mozambique was one of only four countries polled in which the majority held that opinion. According to a 2017 survey, 61 per cent of Mozambicans agreed that gay, lesbian and bisexual people should enjoy the same rights as heterosexuals, and 66 per cent believed that transgender people should also have those same rights (survey conducted by ILGA and RIWI).

<sup>18</sup> See Lambda, "Attitudes towards homosexuality in Maputo, Beira and Nampula".

<sup>19</sup> Ibid.

44. Several lesbian, gay, bisexual and trans people with whom the Independent Expert held discussions highlighted the invisible mechanisms of exclusion that result in their marginalization. As one member of the community noted: “The whole system is designed to exclude lesbian, gay, bisexual and trans people. There is no widespread violence against us, but we are subjected to exclusion, poverty and psychological violence. These are equally valid forms of violence. The wounds of the soul do not heal and they have a negative lifelong impact.”

45. Exclusion often starts within the family. Most parents perceive their children as an extension of themselves and hope they will have a stable, quiet and happy life in every aspect of life: professional, personal and social. Consequently, the level of parental intolerance in cases when their child reveals a diverse sexual orientation or gender identity is often very strong. The Independent Expert heard disheartening testimonies from lesbian, gay, bisexual and trans young people who had been rejected by their families, banished from their home or deprived of financial support. As a result, many of them were unable to pursue their studies and faced certain poverty. The members of the community resort to sex work in numbers that are out of proportion with those of the general population, which points to the lack of other choices.

46. Responses towards inclusivity within religious spaces vary and some claim that these spaces are the most hostile towards diverse sexual orientations and gender identities. The Independent Expert was, however, encouraged to hear wise words from religious leaders who stressed the key role of faith-based communities in promoting respect and tolerance towards lesbian, gay, bisexual and trans people, even if their religious doctrine condemns same-sex relationships. Given that the vast majority of Mozambicans are religious, such calls could quickly permeate many households and greatly contribute to the furtherance of the human rights of lesbian, gay, bisexual and trans people.

47. As in many other parts of the world, trans and other gender-diverse people in Mozambique are among the most vulnerable in society. Due to stigma and prejudice, many transgender people are banished from their families and face barriers when accessing education, health care or work. Given that changing their identity and undergoing gender affirmation treatment is not possible in Mozambique, trans persons have to face daily instances of psychological violence, harassment, humiliation, abuse or arrest upon attempting to seek police protection, owing to the discrepancy between their gender expression and their gender identity.

48. The Independent Expert heard accounts of trans people being mocked, called names, demonized and abused in public space. Some trans women explained that they had stopped going to public health facilities for fear of having their masculine name called out in a crowded waiting room of a health facility, leading to mockery and scornful looks. Several trans persons described immense difficulties in finding a formal job. As a result, many are in vulnerable and high-risk situations, also relating to disproportionate reliance on sex work.

49. According to social expectations, women should marry and have children. The Independent Expert heard several testimonies from lesbian women who were being put under pressure through financial and other means to conform to those expectations by their families and facing exclusion when attempts to change their sexual orientation fail. At school, girls who were considered masculine or were openly lesbian were mocked, bullied and ostracized, and often subjected to sexual harassment to make them “change their minds”. When applying for jobs, employers asked those who appear to be masculine to change the way they dress and behave, to conform to social expectations. A lesbian couple told the Independent Expert that they had been asked by the owner of their rented property to pay double rent or to leave their house, as their neighbours refused to live next door to them. Despite the fact that the domestic violence law is gender-neutral, the Independent Expert was told by one victim that when she reported violence by her same-sex partner to the police, the officers would not accept it in the mistaken belief that the law applied to heterosexual couples only.

50. As elsewhere in the world, bisexual people are not visible in Mozambique. When they come out, they are not taken seriously by their peers, who lack knowledge about bisexuality, and they end up being abandoned by their friends. A bisexual refugee living in

Maratane settlement explained: “When I realized I was bisexual, my friends at Maratane abandoned me. The same happened when my schoolmates got to know about my sexual orientation. They used to crack jokes about me and say that I am abnormal.”

## B. Violence

51. The Independent Expert received information and anecdotal evidence from a number of sources suggesting that police officers often harass and discriminate against trans sex workers and treat them inappropriately. Reports of violence and abusive behaviour by clients of trans sex workers are not always taken seriously by police officers and sometimes lead to arbitrary arrests and release upon payment of a bribe by the client. In addition, police officers do not always respect the gender identity of trans sex workers who are often called their official name. Due to social stigmatization and exclusion, some gay men engage in sex work. In this context, the Independent Expert heard of cases of institutional violence from the police as a means of punishing those men for transgressing social and moral codes.

52. When children disclose their diverse sexual orientation or gender identity, some families want to “solve the problem” and seek help to bring their child back onto the path of “normality”. In such cases, parents may resort to the services of members of the clergy to “free” the child through prayers, and of traditional healers (*curandeiros*), as they believe that their child is acting under “external forces” or is sick. Such “treatments”, which can include psychological, physical and sexual violence, are widely repudiated by major mental health organizations as they have devastating consequences on the mental and physical health of lesbian, gay, bisexual and trans people. As part of such attempts to change the sexual orientation of women and girls, the Independent Expert also heard worrying testimonies of “corrective rapes” imposed as a punitive measure for a disease that needed to be cured. Information received suggests that corrective rapes are arranged by the family or the community, or are organized in the context of a “cure” performed by clergy members or traditional healers. A lesbian woman living in the Maratane camp explained that she was raped by boys from the neighbourhood who said: “How can a woman love another woman? You must be sexually starving! Let’s correct her.”

53. There is no comprehensive study on the situation of lesbian, gay, bisexual and trans people in detention, no clear policy on the treatment of these inmates, and law enforcement and prison personnel lack information and sensitization on the issue. Anecdotal evidence suggests that gay men and trans people are particularly vulnerable to violence in prison. The Independent Expert heard concurring testimonies from gay men who had been raped by other inmates and subjected to pressure by other detainees and prison personnel to remain silent. Transgender persons are placed in male or female prisons on the basis of their biological sex, putting them in situations of great vulnerability to violence, including sexual violence. Furthermore, during their initial detention, transgender people are subjected to ill-treatment, such as having their long hair shaved and all attire judged to be “feminine” confiscated.

54. HIV prevalence among the prison population (24 per cent) is much higher than among the overall male population. HIV prevention, care and treatment are provided by health units in prison facilities and, in the absence of such units within the prison establishment, inmates are referred to an external health centre. The implementation of health policies in penitentiary institutions is under the authority of the National Penitentiary Service, which is supported in this regard by the Ministry of Health. The Ministry of Health is in the process of preparing a biological and behavioural survey of the prison population with a view to updating its understanding of the number of HIV-positive detainees in penal establishments throughout the country.

55. Prisoners are at a greater risk than the general public of being infected with HIV as a result of unprotected sex, among other behaviour. They were identified as a key population

group<sup>20</sup> and as such, prevention measures should include educational and behaviour change interventions and greater access to condoms and lubricants. The Independent Expert was informed by prison authorities, nonetheless, that condoms are not widely distributed among the prison population as the authorities consider that to do so would encourage same-sex sexual relations in detention, and would lead to those using condoms being rejected by their family once they were released for having “changed sexual orientation in prison”. In addition, information at the disposal of the Independent Expert points to the fact that inmates’ access to information about communicable diseases and access to health services is limited. The United Nations country team reported that a significant proportion of inmates discontinued their treatment for tuberculosis and HIV when incarcerated.

56. The Independent Expert met with a number of refugees living in the Maratane refugee camp, which is 35 km from Nampula city. The camp was opened in 2001 and hosts about 10,000 refugees, most of whom are from the Great Lakes region, East Africa and the Horn of Africa. Refugees living in the camp are subjected to several layers of discrimination. The population of the Maratane camp comes from countries where diverse sexual orientations and/or gender identities are often highly stigmatized, sometimes criminalized and punished with imprisonment or even subjected to the death penalty under sharia law. In addition, a significant proportion of the refugees come from countries in which armed conflict is taking place and where populations are confronted with high levels of violence, including sexual and gender-based violence.

57. In these circumstances, the level of prejudice and sexual violence that lesbian, gay, bisexual and trans refugees face in the camp is much higher than in the general population. Reports of violence are often not registered and even those that are registered are rarely addressed by the police officers present in the camp. The Independent Expert was informed that this was the result of a problem of capacity that affected the whole refugee population: with only four police officers allocated to the camp, reports of abuse cannot be addressed adequately. As a result, refugees hide their diverse sexual orientation or gender identity, they become invisible for fear of being ostracized, abandoned or subjected to abuse, including “corrective rapes”, by their community.

58. The Office of the United Nations High Commissioner for Refugees (UNHCR) provides technical assistance to the Government to ensure that registration and refugee status determination procedures are performed in accordance with international standards. The Independent Expert was pleased to learn that, since 2018, UNHCR has started to engage with the lesbian, gay, bisexual and trans population living in the camp, has provided training to health-care providers in the camp and support to the refugees, together with Lambda, is considering placing educational posters in the camp to sensitize the population about sexual orientation and gender identity, and that it intends to formalize its cooperation with Lambda to address the needs of the lesbian, gay, bisexual and trans refugee population living in Maratane.

## C. Discrimination

### 1. Leave no lesbian, gay, bisexual or trans person behind

#### *Health*

59. Mozambique has not yet identified disparities in health that affect the lesbian, gay, bisexual and trans populations or integrated their health needs into its national policies.

60. HIV/AIDS remains one of the major public health challenges in Mozambique. As key populations, the provision of health-care services to transgender persons or men who have sex with men is exclusively focused on HIV/AIDS.

61. The national response to HIV is heavily sustained by external assistance, in particular the United States President’s Emergency Plan for AIDS Relief and the Global

<sup>20</sup> Fourth HIV/AIDS National Strategic Plan (2015–2019).

Fund to Fight AIDS, Tuberculosis and Malaria. Given the absence of a specific focus on sexual orientation and gender identity in the national health policy, the lesbian, gay, bisexual and trans community must find allies to access lesbian, gay, bisexual and trans-friendly health services, including among reproductive health communities. Several such organizations that were receiving global health assistance from the United States of America for implementing programmes related to sexual and reproductive health have been affected by the so-called global gag rule. Under this policy, foreign organizations receiving United States global health assistance are prohibited from performing or promoting abortion as a method of family planning, including by offering legal advice or counselling related to abortion.<sup>21</sup> Given that many of these organizations often bring together a wide range of services, from HIV prevention, care and treatment to family planning, this rule has an indirect impact on the right to health of the lesbian, gay, bisexual and trans populations. Research has shown, for example, that the Mozambican Association for Family Development had to close several clinics that were considered lesbian, gay, bisexual and trans-friendly due to the dramatic reduction in its budget that resulted from its inability to comply with the requirements under the global gag rule.<sup>22</sup>

62. The specific health needs of gay men (aside from their behaviour as men having sex with men), lesbian women, bisexual persons and trans men are completely omitted from national health policies. Only a small number of health facilities are known by the community for being lesbian, gay, bisexual and trans-friendly. The Independent Expert was told that some members of the community bribe medical doctors to be assigned a “good” caregiver, one who treats them with respect and dignity. He heard testimonies of trans persons who would conceal their gender identity and remove female clothing and attire to avoid being mocked or ridiculed by caregivers or by others when health professionals would call them using their male name. Others said they would rather resort to traditional healers to receive treatment for sexually transmitted diseases or have recourse to self-medication. The early closure of health-care facilities, at 3 p.m., constitutes another obstacle to accessing health services by trans sex workers.

63. Health disparities facing lesbian, gay, bisexual and trans populations generally stem from a variety of factors, including from the stress they experience on the basis of sexual orientation and gender identity. This stress is induced by the discrimination, stigma and internalized homophobia, biphobia and transphobia experienced by individuals in their daily lives. It is also influenced by other factors that shape each individual’s identity, such as race, ethnicity, religion, health status and migration and economic status. It has been linked to mental health problems and other adverse health outcomes.<sup>23</sup>

64. In the absence of psychosocial professionals trained on issues regarding sexual orientation and gender identity, Lambda has started offering free psychosocial support to lesbian, gay, bisexual and trans individuals and their families and has conducted various training programmes to expand psychosocial support. The services provided, however, remain diminutive compared with the need.

65. There is no access to gender affirmation treatment, such as surgery or hormonal therapies. As this is an essential element to affirm their gender identity, transgender persons may risk using artisanal procedures, such as the injection of industrial silicone oil for breast augmentation. Those who can afford it may go to neighbouring countries to get treatment not available in Mozambique. When they come back, however, they face risks linked to the discrepancy between their gender expression and their legal identity.

<sup>21</sup> See Adva Saldinger and Lisa Cornish, “An atmosphere of fear under ‘global gag rule’ shows comprehensive new report”, Devex, 6 June 2018.

<sup>22</sup> See Center for Health and Gender Equity, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984–2018* (Washington, D.C., 2018).

<sup>23</sup> See Ilan H. Meyer, “Prejudice, social stress, and mental health in lesbian, gay, and bisexual populations: conceptual issues and research evidence” *Psychological Bulletin*, vol. 129, No. 5 (September 2003); and Karel Blondeel and others, “Violence motivated by perception of sexual orientation and gender identity: a systematic review”, *Bulletin of the World Health Organization*, vol. 96, No. 1 (January 2018).

*Education*

66. Many interlocutors explained that they had been bullied in school on the basis of their sexual orientation or gender identity. They felt unsafe, excluded and ostracized, and several explained that they had dropped out of school as a result of such abuse.

67. On 1 November 2018, the parliament approved a revision of the law on the national education system with a view to aligning and harmonizing it with the international and regional commitments of Mozambique, including the 2030 Agenda for Sustainable Development. The revision is aimed at guaranteeing equitable and inclusive education for all, promoting respect for human rights and cultivating a spirit of tolerance, solidarity and respect for the others and their differences.

68. Policies and guidelines to combat homophobic, biphobic and transphobic bullying in educational settings are, however, lacking, as are support and protection systems. All issues related to sexuality and gender identity are generally considered taboo. As a result, very few teachers are trained in or aware of sexual and gender diversity and the school curriculum does not cover topics that would raise awareness among and educate students on these issues. In recent years, efforts have been made to expand comprehensive sexuality education to increase children's and young people's knowledge about sexual and reproductive health and rights, but the scope of the teaching has not been extended to cover issues related to sexual orientation or gender identity.<sup>24</sup>

69. As in all other fields of life, civil society is filling some of the gaps. Lambda trained 40 schoolteachers in 2017 and 121 in 2018 on sexual diversity and gender identity from a human rights-based approach. Interestingly, in the context of these training courses, teachers themselves acknowledged that discrimination based on sexual orientation in the school environment is a real problem and that there was a need to adopt specific strategies with regard to sexual orientation and gender identity. They also highlighted the fact that more information on these issues should be available, not only in the school environment, but in communities and in society in general.<sup>25</sup>

70. The Independent Expert notes that educational settings play a key role in nurturing a sense of empathy, dispelling myths that transform into stigma, and contributing to a more tolerant and inclusive society (A/HRC/35/36, para. 61).

## **2. A vibrant civil society movement, for which the support of the State is prescribed by the law, and yet is refused without justification**

71. The right to freedom of association is regulated by Law No. 8/91 on associations, which stipulates that registration of an organization should not take more than 45 days (art. 5). Limitations to the right to freedom of association enshrined in the Constitution are strictly limited to the formation of armed, military or paramilitary associations and those that promote violence, racism, xenophobia or that pursue purposes contrary to the law (art. 52 (3)).

72. The Independent Expert wishes to acknowledge the extraordinary work done by Lambda, the sole organization taking upon itself to defend the lives and integrity of every lesbian, gay, bisexual and trans persons in a country of almost 30 million persons. Thanks to Lambda, many lesbian, gay, bisexual and trans people who had been otherwise excluded and ostracized found a community that is accepting and enabling. The Independent Expert is persuaded that through its work, Lambda must have saved many lives. Throughout the visit, State and non-State interlocutors identified Lambda as the indispensable organization in the field of sexual orientation and gender identity.

<sup>24</sup> See United Nations Educational, Scientific and Cultural Organization (UNESCO) "Moçambique: relatório anual 2017".

<sup>25</sup> Lambda, "É importante desmistificar mitos e tabus ligados a homossexualidade no espaço escolar", LambdaNews; and Lambda, "A escola é lugar para ensinar sobre o respeito às diferenças", LambdaNews.

73. Yet, this organization continues to be refused its legal personality. Its registration process started on 28 January 2008. Shortly afterwards, members of the organization were informed that the “moral code” of the country posed an obstacle to the registration. In March 2009, the Minister of Justice recommended that Lambda amend its application, which it did. In September 2013, the Ombudsman made a request to the Constitutional Council to pronounce itself on the constitutionality of article 1 of the law on associations, which adds other exceptions to the right to freedom of association in addition to those enshrined in the Constitution. In 2017, the Constitutional Council declared article 1 of Law No. 8/91 unconstitutional, not only on the grounds that it broadens the limits of association set by the Constitution (i.e., by extending it to limitations based on moral grounds), but also because it runs contrary to the principles of equality and non-discrimination.<sup>26</sup>

74. Several States and United Nations human rights mechanisms have called upon Mozambique to process Lambda’s application for registration expeditiously: Canada, during the universal periodic review in 2011 (A/HRC/17/16, para. 89.67), the Human Rights Committee in 2013 (CCPR/C/MOZ/CO/1, para. 22) and Norway, Canada and the United Kingdom of Great Britain and Northern Ireland during the universal periodic review in 2016 (A/HRC/32/6, paras. 129.34 and 130.12–130.13).

75. The Independent Expert is concerned that the non-recognition of Lambda and the misconception, by some authorities, that Lambda is “promoting” or “encouraging” homosexuality has an impact on the conceptualization and operationalization of human rights among civil society organizations. The Independent Expert was told that some organizations do not want to cover sexual orientation and gender identity as part of the equation in the struggle for human rights or do not want to support initiatives from Lambda as they believe they might be seen as “supporting practices that are not tolerated by the State”.

76. In the view of the Independent Expert, the refusal by Mozambique to grant the legal personality required by law to the civil society organization Lambda is contrary to its own law, and will remain, until fully corrected, a blemish on the State’s record in the fight against violence and discrimination.

## V. Conclusions

77. **The Independent Expert wishes to commend Mozambique for having chosen the path of tolerance, despite having had colonial laws that persecuted persons on the basis of their sexual orientation or gender identity imposed on it. It is laudable that provisions that could have been interpreted as criminalizing same-sex sexual relations were repealed in 2015. The culture of tolerance that is fully owned and cherished by Mozambican people constitutes an extraordinary capital to protect lesbian, gay, bisexual and trans people from levels of violence to which they are subjected in other parts of the world. In and of itself, however, tolerance is not sufficient to enable people to live openly and proudly, as lesbian, gay, bisexual and trans people are caught up in a spiral of exclusion and pushed to the margins of society if they dare to break the tacit pact of social invisibility.**

78. **Mozambique will need to take decisive action to move from a spirit of tolerance to full acceptance and sociocultural inclusion of its lesbian, gay, trans and bisexual populations. All indicators show that the society is ready to make that move, but to do so, Mozambique needs to invest heavily in education and awareness-raising measures. To date, myths and misconceptions continue to hinder public policy agenda and stigma lead to discrimination against lesbian, gay, bisexual and trans people in all areas of life. To date, Mozambique is effectively leaving behind people with diverse sexual orientations and gender identities. To change that, Mozambique needs to**

<sup>26</sup> Constitutional Council, judgment No. 07/CC/2017 of 31 October. Unofficial translation available at [www.amsher.org/wp-content/uploads/2017/11/Lambda-Mozambique\\_Court-Judgement\\_Unofficial.pdf](http://www.amsher.org/wp-content/uploads/2017/11/Lambda-Mozambique_Court-Judgement_Unofficial.pdf).

urgently acknowledge and embrace its lesbian, bisexual, trans and gay populations in order to build a just and inclusive society free from fear and violence where everyone can enjoy prosperous and fulfilling lives.

## VI. Recommendations

79. With regard to cooperation with international and regional human rights mechanisms, the Independent Expert recommends that the Mozambican authorities:

(a) Ratify the International Covenant on Economic, Social and Cultural Rights and the International Convention for the Protection of All Persons from Enforced Disappearance, and take the necessary measures to accept individual complaints procedures under all international human rights treaties;

(b) Fully integrate recommendations related to sexual orientation and gender identity made by international human rights mechanisms into its national plan of action, and move towards their implementation;

(c) Adopt legislative, administrative, judicial and other measures necessary to curb violence against persons based on their real or imputed sexual orientation or gender identity, as prescribed in resolution 275 of the African Commission on Human and Peoples' Rights and in line with the treaty obligations of Mozambique under the African Charter on Human and Peoples' Rights,<sup>27</sup> which guarantees the principles of equality and non-discrimination and other fundamental rights and freedoms, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol),<sup>28</sup> which requires States parties to take specific measures to combat violence against women regardless of their sexual orientation or gender identity.

80. With regard to the legal framework, the Independent Expert recommends that the Mozambican authorities:

(a) Adopt anti-discriminations laws and other measures to integrate sexual orientation and gender identity in the national legislation of Mozambique. Anti-discriminations laws should cover both the public and private spheres, and provide protection in key contexts, such as education, health care, housing and provision of good and services. To be effective, anti-discrimination frameworks should provide for effective measures to investigate alleged violations, provide redress for victims and accountability for alleged perpetrators (see A/72/172). Anti-discrimination legislation can take different shapes and forms. Inclusion of the grounds of sexual orientation and gender identity in the Constitution has proved to be best practice, and Mozambique could amend article 35 of the Constitution to add these grounds as prohibited grounds of discrimination;

(b) Add the grounds of sexual orientation and gender identity to article 243 of the Penal Code with a view to criminalizing discrimination on those grounds, and enact laws against hate crime and hate speech that establish homophobia, biphobia and transphobia as aggravating factors for the purpose of sentencing;

(c) Amend article 77 of the 2004 Civil Registry Code to enable transgender persons to change their legal identity and gender marker. Alternatively, Mozambique could adopt directives requesting the Civil Registrar to change the name and gender marker of transgender person who wish to do so, as provided under article 85 (1) (m) of the Code. As a matter of general principle, the process of gender identity

<sup>27</sup> Mozambique ratified the African Charter on Human and Peoples' Rights on 22 February 1989. The African Commission recently issued a non-exhaustive list of grounds for discrimination, which includes gender and gender identity, in its general comment No. 4 on the African Charter on Human and Peoples' Rights: the right to redress for victims of torture and other cruel, inhuman or degrading punishment or treatment (article 5).

<sup>28</sup> Ratified by Mozambique on 9 December 2005.

recognition should be based on self-determination by the applicant, be a simple administrative process, be exempt from abusive requirements, recognize non-binary identities, and be accessible to minors (see A/73/152);

(d) Train law enforcement and judicial staff to ensure that the law on domestic violence is properly implemented and effectively protects same-sex partners.

81. With regard to the policy framework, the Independent Expert recommends that the Mozambican authorities:

(a) Establish a basic knowledge base to learn about the human rights situation of its lesbian, gay, bisexual and trans populations and understand the barriers they face with regard to the enjoyment of their human rights, including access to education, health, work and other public services, but also to assess the extent of the violence they face in all areas of life. Good practice when assessing the lived experience of lesbian, gay, bisexual and trans people takes as points of departure health, education, economic well-being, personal security and violence, and political and civic participation;

(b) In collaboration with civil society actors, design and implement an education campaign about sexual orientation and gender identity with a view to dispelling myths and misconceptions, combating gender-based stereotypes, sharing knowledge to break the cycle of discrimination and exclusion, promoting positive social change and building an inclusive society where everyone can live free and equal;

(c) Create educational programmes and materials to promote equality, combat discrimination and violence based on sexual orientation and gender identity, and challenge gender norms;

(d) Institutionalize and scale up training for State officials, including police and penitentiary staff, judicial staff, health professionals and teachers, on human rights, sexual orientation and gender identity. Such training should be extended to traditional and religious leaders, traditional healers, journalists and other media personnel;

(e) Formulate public policies and protocols for key institutions, from the chain of justice through public health or social services, to eradicate violence and discrimination on the basis of sexual orientation and gender identity and to promote the social inclusion of lesbian, gay, bisexual and trans persons;

(f) Together with the communities affected, design methods and protocols for the collection and use of data related to sexual orientation and gender identity with a view to making visible and understanding the nature and extent of discrimination and violence faced by lesbian, gay, bisexual and trans people in order to inform public policies. In doing so, State authorities should adopt a human rights-based approach to data collection and use, and take into consideration people's right to self-identification regarding their sexual orientation and gender identity, the participation of concerned communities, the privacy of individuals involved in data-collection efforts, confidentiality of information received, transparency and accountability.

82. With regard to the right to liberty and security, the Independent Expert recommends that the Mozambican authorities:

(a) Adopt all measures necessary to prevent, investigate and punish violence against and harassment and discriminatory treatment of trans and gay sex workers by police officers and provide victims with reparation. In order to increase reporting and ensure assistance for victims of abuse, establish lesbian, gay, bisexual and trans-friendly reporting and support mechanisms for victims, for instance by adding lesbian, gay, bisexual and trans people as beneficiaries of the police station-based violence victim support units and by developing integrated assistance to victims of abuse;

(b) Conduct an inquiry into the "conversion therapies" that are reportedly perpetrated by clergy members and traditional healers (*curandeiros*) to allegedly "free" lesbian, gay, bisexual and trans people through prayers and other practices,

and investigate allegations of abuse taking place in this context, including psychological, physical and sexual abuse;

(c) Undertake a comprehensive study on the situation of lesbian, gay, bisexual and trans people in detention, investigate allegations of sexual violence against them and adopt clear policies on their treatment in detention that take into consideration their particular vulnerability, drawing from the existing guidelines and good practices in this regard;<sup>29</sup>

(d) Undertake studies on the extent of bullying based on sexual orientation and gender identity in educational settings and domestic violence affecting the lesbian, gay, bisexual and trans communities;

(e) Increase the presence of the police in the Maratane refugee camp in order to provide better protection to the refugee population, including lesbian, gay, bisexual and trans refugees, and accountability for human rights violations.

83. With regard to the right to health, the Independent Expert recommends that the Mozambican authorities:

(a) Carry out research to identify health disparities and the health situation of the lesbian, gay, bisexual and trans populations with a view to integrating their specific health needs in public health policies;

(b) Step up efforts to raise awareness among health professionals about issues related to sexual orientation and gender identity and adopt nationwide directives to guarantee access to high-quality, stigma-free health-care services to lesbian, gay, bisexual and trans individuals;

(c) Ensure the accessibility and affordability of gender-affirming care for transgender persons, including hormonal treatment, surgery or other health-care services to bring the individual's body into alignment, as much as the individual desires and to the extent possible, with the experienced gender;

(d) Continue and scale up efforts to ensure key populations' access to HIV/AIDS-related health services and to provide user-friendly care for lesbian, gay, bisexual and trans sex workers and men who have sex with men, including those who are deprived of their liberty;

(e) Include lesbian, gay, bisexual and trans populations in national public prevention measures to combat HIV and adopt urgent measures to prevent HIV infection in penitentiary institutions, such as educational and behaviour change interventions, and access to condoms and lubricants.

84. With regard to the right to freedom of association, the Independent Expert recommends that the Mozambican authorities grant without further delay the Lambda organization the juridical personality required by law.

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<sup>29</sup> Association for the Prevention of Torture, *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide* (Geneva, 2018).