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Access to Law and Justice: Advocacy and Legal Assistance Between the State, the Market and the Community

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Introduction

In Mozambique, although the right to defense, assistance and legal representation is a fundamental right for all citizens (Article 62 of the present Constitution), this constitutional requirement has not yet become a reality.

Throughout the early revolutionary period in the country,¹ legal assistance was the monopoly of the state. In an attempt to redress the lack of defense lawyers, especially for the accused in criminal cases, the first 20 people's defenders were trained on an intensive course in the late 1970s. As state employees in the Ministry of Justice, they were sent to the country's various provinces and started practicing in the newly created People's Provincial Courts. Gradually, they were incorporated into the *Serviço Nacional de Consulta e Assistência Jurídica*² that became the only entity qualified to supply free legal assistance.

In 1986 the *Instituto Nacional de Assistência Jurídica* (INAJ) was founded, with its own statutes but still under the Ministry of Justice.³ The INAJ was created to try to reconcile the growing demand for legal services (defense and representation in the courts and extra-judicial consultation) with the limited availability of qualified lawyers. By 1990, the INAJ was already establishing branches in the main provincial capitals.

With the reintroduction of private advocacy in the 1990s, the INAJ was replaced by the *Instituto de Patrocínio e Assistência Judiciária* (IPAJ)⁴ in 1994, although its functions and performance remained similar.

According to the INAJ and IPAJ statutes, there were three categories of legal defenders: lawyers with a full law degree; legal technicians with a bachelor's degree in law; and legal assistants trained on *ad hoc* courses. These professionals could provide paid legal and extra-legal representation and consultation services, according to rates established by INAJ. However, free legal representation was provided for people who were unable to pay, in which case INAJ itself covered the fees.

Nowadays access to the law depends, to a great extent, on the work of the non-governmental organizations (NGOs). With the opening up of the political sphere since the late 1980s, the NGOs began to play an important role in defending human rights and denouncing their abuse by the authorities. In fact, it may be said that the right to legal defense and legal assistance has been guaranteed more by NGO initiatives than by the state institutions.

1. Advocacy and Legal Assistance

In 1994, private law practice was permitted once again and the law creating the Mozambique Bar Association⁵ was approved (Law no. 7/94 of 14 September). In one sentence, Law no. 7/94 enshrined advocacy as one of the three pillars of the administration of justice. The Mozambique Bar Association is a collective body governed by public law, independent of any organs of the state and possessing administrative, financial and patrimonial autonomy. It reproduces the public organizational model of the Associations which exist in most continental European legal systems.

Simultaneously, the legislation deemed that the INAJ had already fulfilled the objectives which had led to its creation and also affirmed the need to “adopt legal mechanisms more suited to the new demands of society, in terms of practicing advocacy,” in order to effectively guarantee that the right to legal defense was recognized for all citizens. Therefore, as the INAJ was brought to an end, it was replaced by the IPAJ in response to the need to create an organization that could guarantee access to justice for citizens who were economically disadvantaged (a Constitutional right).⁶

Rules of Access and the Practice of Private Advocacy

The Association is entrusted with certain obligations, namely those of defending the rule of law and individual rights, liberties and guarantees, collaborating in the administration of justice, contributing towards the development of the legal culture and perfecting the law, the obligation to pronounce on drafts of legislation of interest to the practice of advocacy; participation in the study and dissemination of the law, and the promotion of respect for the legal order (Article 4). The statutes of the Bar Association also establish norms which provide for the independence of lawyers in relation to other professions by identifying practices incompatible with the exercise of advocacy. In addition they emphasize the ethical-social role of advocacy by establishing the moral obligations by which lawyers should regulate their professional and civic conduct.

The Bar Association exercises its prerogatives through its organs, which are the presidency, the general assembly, the jurisdictional council and the governing council. Each one of these exercises disciplinary action over its members, in accordance with its statutes and regulations. Official ceremonial honors, similar to those of the Attorney General's Office, are conferred upon the president.

Only lawyers and trainee lawyers⁷ enrolled in the Bar Association can practice professionally, or, in other words, exercise their judicial mandate or offer legal consultations as a paid member of the liberal professions. The beginning of legal practice has to be preceded by a training period. Law graduates from Mozambican universities, as well as graduates from foreign universities whose diplomas have been officially recognized, can request to enroll as trainee lawyers. Enrollment as a lawyer is also offered to foreign citizens awarded a diploma by a Law Faculty in Mozambique. Foreign lawyers who have qualified in faculties abroad can also enroll in the Association if there are government agreements which establish a reciprocal regime and satisfy the necessary requirements.

In certain cases, legal technicians⁸ and legal assistants are also allowed to practice as lawyers if there are not enough lawyers in their area.

Legal technicians are allowed to intervene in cases in which the amount involved does not exceed the range of the provincial judicial court or in criminal cases which do not involve prison sentences of more than two years, with or without a fine. Legal assistants may defend cases which do not exceed the range of the second-class district court or crimes which do not involve a prison sentence of more than one year, with or without a fine.

Power of attorney, in principle, corresponds to a paid activity and the criteria for determining fees, to be paid in cash, are the time involved, the difficulty of the case, the client's means and the result obtained. A prior adjustment of fees is allowed, with the lawyer able to demand a sum of no more than half of the total. The '*quota litis*' (or 'contingent fee', in the North American system) — in other words, the setting of fees in relation to the final settlement, especially when this involves a purely monetary content — is forbidden. The sharing out of fees is also forbidden, except with colleagues who have collaborated on the case.

The Market for Legal Services in Mozambique

At present in Mozambique, an imbalance has been observed in the legal services market, with the number of lawyers low in relation to the potential demand for this type of service. At present, about 300 lawyers (and respective trainees) are enrolled in the Bar Association, almost all of whom are concentrated in the city of Maputo. Some also go out to the provinces; however, in 2000 only about half a dozen lawyers were established outside the capital and today the numbers remain strikingly similar. This imbalance shows that the Bar Association only guarantees the right to judicial or extra-judicial legal representation and assistance for a clientele belonging to the urban elite living in the capital. If we consider only the most well-known or those who work

professionally on a full-time basis, this imbalance becomes even more evident. This situation allows many to specialize, almost exclusively, in sophisticated business law, preferably working for large companies (especially those with foreign capital) and public institutions, and to do consultancy work. Apart from this, some civil economic litigation and large-scale economic crimes are the only other cases handled by these law firms.

The cost of a lawyer's services is therefore extremely high, both in absolute and relative terms. Moreover, the fee system of payment by the hour practiced by some lawyers makes legal services even more expensive.

Up until 2000, the majority of lawyers interviewed had either had a European training acquired abroad (particularly in Portugal) or at the Eduardo Mondlane University, whose faculty and curriculum are still Portuguese-influenced.⁹ Consequently, for the time being law firms have foreign partners, predominantly Portuguese law firms. Portuguese lawyers also have a direct presence in the Mozambican legal services market, through their own law firms and in partnership with Mozambican lawyers. There is little regional integration within the SADC area,¹⁰ evident in the type of training lawyers receive and in the absence of regional networks of law firms. Even interpenetration in professional practices is weak, except for the embryonic influence of Anglo-Saxon legal practice in the drafting of contracts for South African investors.

The Bar Association still has little legitimacy among the most well-known lawyers in the city of Maputo, where it has its headquarters. Its model is that of a classical corporate civil organization, with rules controlling access to the profession. Consequently, apart from the habitual disadvantage of this kind of organization in terms of limiting competition, there is the additional fact that the market itself is already not very competitive.

The Bar Association and the Legal Technicians and Assistants

Legal technicians and assistants with inadequate training and without any institutional framework continue to share part of the legal services market with lawyers, whilst struggling against the Bar Association in Maputo city in order to maintain their professional status. Since lawyers prefer consultancy work and business advocacy (which does not require their presence in court), and taking into account their reduced number, there is reasonable potential demand for legal technicians and legal assistants, whether for minor civil litigation – which they prefer – or in the penal field. This is due, above all, to the fact that their fees are much lower than those of the lawyers and also because lawyers are inaccessible to the majority of citizens and small businesses. It is these professionals who defend almost all interests outside Maputo city. Although the position of the Bar Association is more restrictive, some judges and even several lawyers recognize the need for these kinds of professionals to continue working in the judicial arena of Maputo city and in the provinces.

The Institute for Legal assistance and Representation (IPAJ)

Access to justice is extremely selective, as stated above. The state legal assistance system is incapable of responding satisfactorily to the increasing needs of citizens because it lacks the financial, human, technical and organizational resources.¹¹

Over the years following its creation, several branches of the IPAJ have opened in all the provincial capitals and their members (legal technicians and assistants) have been assigned to the provincial courts to ensure public defense. However, these legal aid services are marginal, functioning under poor conditions and are hardly known or recognized by most citizens.

As an institution dedicated to providing legal assistance and representation for the needy, the IPAJ has been unable to ensure that legal defense is actually free of charge for the citizens that resort to its services. Most of its members have no institutional, contractual link with the IPAJ. They are left to their own devices, charging low fees for their work.

In 1999 the IPAJ had approximately 360 registered members: 232 legal technicians and 128 legal assistants. However, the Ministry of Justice acknowledged that these figures had to be read cautiously. Their current number throughout the country is impossible to obtain; however, we estimate that in 2004 there were around 400 IPAJ members. Of these, only ten legal technicians actually held a formal contract with the IPAJ head office in Maputo.¹² The Institute does not cover the salaries of the remaining assistants.

Our research has shown that five main problems affect access to the public system of defense and legal assistance in Mozambique: a lack of political commitment; inefficient leadership and management in the IPAJ; a lack of resources; a lack of dialogue and links with the NGOs; the *de facto* privatization of the system.

The lack of political commitment on the part of the Ministry of Justice has meant that the (human, material, financial and organizational) institutional resources available to the state are insufficient to meet the growing needs of citizens. The IPAJ's inadequate funding, together with a high turnover of senior staff has led to its present day inefficient management (characterized by a lack of rules and procedures) and poor quality service.

The lack of any links between the IPAJ and other associations which promote and defend human rights is one of the weaknesses of the system given that, as previously stated, these are the organizations which citizens resort to most frequently to defend their rights.

Most of the IPAJ's affiliates work privately, as 'lawyers' for example, being less well-paid than the licensed lawyers and offering a barely adequate service.¹³ They have to live off the income from their profession, which means that legal technicians and assistants end up giving priority to civil cases for financial reasons and neglect criminal cases, even though these account for most of the courts' activities and the accused are almost always needy or even poor. Therefore, neither the legal technicians nor the legal assistants, much less the lawyers and trainees, actively intervene in official

defenses, which are left up to *ad hoc* appointments, sometimes even clerks of the court. This situation is particularly serious given the almost total absence of lawyers in the courts, particularly in criminal cases. People with limited resources therefore have no chance of obtaining legal representation, and if the quality of defense in the courts is weak in general, public defense is much worse. These factors have led us to question whether the actual IPAJ is, in fact, capable of offering a service to the public for whom it was created, namely the most disadvantaged citizens. In effect, given that the geographical area covered by any of the alternatives (lawyers, legal assistants and legal technicians) is very restricted, and the costs prohibitive, most individuals using the courts are prevented from resorting to any specialist professional service to defend their rights, either at the pre-trial stage or during the trial itself.

In Mozambique, access to justice and the law is therefore very selective – given the inability of the public defense system (the IPAJ) to provide an adequate service and to function efficiently and the difficulty of hiring lawyers due to cost and scarcity – so that the constitutional objective guaranteeing this right has yet to materialize.

It is not surprising therefore that the human rights NGOs are the most prestigious organizations in the eyes of citizens, due to the defense and legal information services they offer.

Sometimes these NGOs are actually the only support organizations people are aware of (see below). More recently, the Law Faculties (*e.g.* Eduardo Mondlane University and the *Instituto Superior Politécnico e Universitário*, ISPU) appear to have altered their views on the effectiveness of the right to justice by creating legal clinics for needy citizens, an institutional innovation also geared toward giving practical training to final year students. Despite this, there is little close or regular collaboration between this type of organization and the IPAJ or the Bar Association.

2. The NGOs, Access to the Law and the Defense of Human Rights

The Mozambican League of Human Rights (LDH)

Given that, at the moment, access to the law and justice is largely dependent on NGO activities, the research project included a case study on the Mozambican League of Human Rights (LDH).¹⁴

The LDH was the first institution in civil society created with the fundamental aim of offering legal assistance to the most disadvantaged citizens and leading and promoting the campaign for the defense of human rights. Its central role in this struggle – with all the socio-political implications this involves – and the evident popularity it enjoys in the country, justify its inclusion in this work.¹⁵ The aim of the study was to analyze the League's performance and its importance to citizens and to the consolidation of human rights policies in the country. In fact, in contemporary Mozambique the LDH stands as an example of a NGO which takes the defense of human rights as its central objective.

The Organization of the League

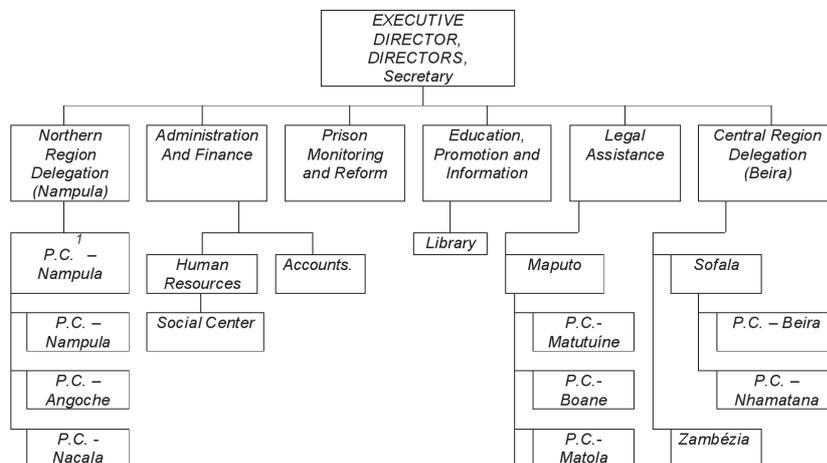
The League is a relatively new institution with a highly centralized structure. The majority of its human and financial resources are concentrated in its head office, located in Maputo city. Moreover, it is an organization personified by its president, Alice Mabota, whose courage has enabled her to resist pressures and external obstacles. The structure and the profile of the League are, to a great extent, defined by its President's powerful personality.

Moreover, this stance also characterizes relations within the institution – which are vertical – with paralegal staff and support services personnel subordinate to lawyers and these, in turn, to the president.¹⁸ The very image of the institution is safeguarded by the rigor imposed by the president. Misbehavior by members that might damage the organization's prestige is promptly sanctioned by the president.

However, from the outset the LDH has always struggled with a lack of full-time lawyers. It only has professionals who are hired and paid for the work they do. There are strong indications that this situation can result in some of them practicing privately as lawyers within League premises and transferring the cases that involve less money to the institution itself.

Finally, the paralegal centers (PCs) located outside Maputo struggle with difficult conditions, both in terms of premises and equipment. Sometimes paralegal staff even lack basic working conditions, such as chairs and office desks.

Figure 9.1: Organization of the League's head offices (in 2000)



The Development of the League

The League has extended and developed its structure and, at the time when the research was carried out, covered large areas of the country.¹⁹ This situation requires very tight and very much more visible coordination. However, financial and staffing constraints mean that there is inadequate supervision of the paralegal centers.

In addition, centralization in the head office, accompanied by bureaucratic procedural rules, can constrict the activities of the paralegal staff. For example, the credentials of paralegal staff in the Matola Center (Maputo province) must be obtained from the head office in Maputo. In cases where these credentials are required by other entities, this bureaucratic condition makes proceedings even slower. Even in the head office, as solicitations are increasing, the supervision and sanctioning of paralegal staff is inadequate. Furthermore, there are no guaranteed mechanisms for any ongoing interaction that could anticipate errors arising out of the inadequate training of the paralegal staff.

The Scope of the League's Activities

Given the general lack of action on the part of the higher state institutions to put an end to human rights violations by public and private entities, the League appears as the main denouncer, and therefore mobilizes national and international public opinion on the human rights situation in Mozambique. Following the creation of the LDH, the issue of human rights has begun to be debated in the country in a much more open and incisive way. The pressure that the League exerts on the state has, to a certain extent, found a response, if we consider the substantial reduction in cases of police abuse in recent years. The coverage of the so-called *Tchembene case* by the LDH was instrumental in forcing police authorities to initiate criminal proceedings; it precipitated the downfall of the Minister of the Interior at the time, who was strongly suspected of illegal conduct.

According to the League's 2001 Annual report, the Maputo office handled 731 cases, two thirds of which were classified by the LDH as labor and civil matters. The great majority of civil matters are filed by women and involve questions of child custody, child support, alimony or separation payments and inheritance matters. It should be pointed out that, out of 252 labor cases, about half of them (128 cases) were settled by out-of-court mediation conducted by the League's paralegal staff. Finally, 109 cases were classified as criminal (Liga de Direitos Humanos, 2001).

Nowadays the LDH is an essential point of reference as an institution that defends human rights. Its legitimacy in the community is unquestioned. Moreover, the maturity and credibility of its programs of action has helped mobilize financial resources from international agencies.

As reported, the League receives a very heterogeneous selection of cases and handles situations that extend beyond the legal sphere. The subjects under discussion do not follow rigid criteria, in contrast to the proceedings in judicial courts where discussion meets the criteria of *legally relevant material*. Ordinary citizens have problems

and face social conflicts which need to be resolved. They usually find a response in the League, regardless of the legal nature of their problems. User participation is much more widespread. The absence of solemn formalities when dealing with people permits broad-based participation in the relevant hearings. In addition, there are no so-called limits to the cases on trial. Cases can be discussed and (re)discussed several times. Everyday language and the national languages predominate, so that there is no need for an interpreter, facilitating free dialogue between members and users.

The Mozambican League for Human Rights plays a substantial role, not only in improving the conditions for citizens' access to justice, but also in denouncing actions and omissions which contend with the rights, freedoms and guarantees of citizens. The League often replaces the government and the courts, performing functions that, according to formal law, are reserved for them.

In Mozambique, as in other peripheral countries, the contingencies of democracy – intersected by long periods of war – and even the processes which gave rise to the third sector, have made relations between it and the state much more unstable and problematic. There is great resistance and many constraints on its activities, as is the case today with the LDH. Given that, on its own the extremely weak state is performing its role inadequately, new forms of collaboration with the community need to be found in order to guarantee that its power is extended more effectively. As Santos affirms, “complementarity between the third sector and the state is, in democratic countries, the other main way of creating a public, non-state arena. For this to happen, however, it is necessary to distinguish between complementarity and substitution” (1999: 46). In addition, the LDH can grant Mozambique very important subsidies in its field of activity.

3. Domestic Violence: Gendered and Child Violence – the Role of the NGOs and the Maputo Juvenile Court

The emergence of the League has provided an impetus for the creation of other NGOs with identical aims, although with very different profiles in relation to their specific objectives. There are various organizations which defend the rights of the most vulnerable groups in society in general and the rights of women and children in particular.²⁰

Gendered and child violence has become a worldwide problem covering all aspects of the lives of women – the family, the workplace and the public arena. Although efforts have been made to understand the nature and global dimensions of violence in order to define more efficient strategies to combat it, it is only very recently that gender theories have been incorporated into an analysis of violence.

The International Context

The United Nations Decade for Women (1975-1985) triggered a focus on the problem of gendered violence. During this decade, world summits and conferences took place, organized by the United Nations, during which themes relating to equality, development and the need to increase the role of women in production and development were

presented, both by governments and NGOs. However, even in the mid 1980s it was recognized that in spite of the integration of women into development, they continued to play a subordinate and dependent role, which led the feminist movement to raise the issue of violence against women and the violation of human rights.

Even at world events dedicated to women, where the theme of gendered violence was on the agenda, there were few speeches delivered on the subject (*e.g.* the Copenhagen Conference); five years later at the Nairobi Conference (1985) the theme of violence received more attention, although it was not considered relevant to development.²¹ By 1986, during a meeting in Vienna, the theme of violence against women within the family was given priority, resulting in the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. The Declaration of the Elimination of Violence Against Women (December 1993) defined violence as one of the gender-based forms of discrimination and inequality. The culmination of this process occurred at the Beijing Conference in 1995.²² Discussions on violence against women within the family, within marriage, in the workplace, in the public arena, and against children took place, examining different perspectives. The very active participation of Mozambican NGOs and government organizations at the Conference, which contributed towards the theme receiving the attention it did, should be emphasized. In addition, the networks that were established after Beijing became an inspiration for the start of an open process of challenging and combating violence.

The Debate on Domestic Violence in Mozambique

The debate on domestic violence in Mozambique has been particularly intense since the start of 1996. At that time various public figures and particular members of various women's organizations were deeply involved in debating the issue, both on television and in the newspapers.²³ The debate was highly indicative of the ideas which common sense conveys of domestic violence and the place of women within the family. That is to say, the 'preconceived ideas' about violence were full of meanings based on presuppositions about the construction of masculinity and femininity and about the relative positions of women and men. It should be noted that when we speak about common sense, we are referring to the dominant discourse which is imposed and conveyed by social institutions and which, by gaining the appearance of a consensus, becomes even more effective.

However, in general, one of the areas of litigation absent in the courts is that of domestic violence, due to the barriers which its victims experience in terms of access to the law. Domestic violence constitutes a particularly visible manifestation of the imbalance of power between women and men and occurs at all levels, regardless of any specific cultural, religious or class characteristics, even when it assumes different forms. Domestic violence is revealing of the system of male dominance, particularly at the level of the institutions of marriage and the family. As the research carried out – as part of a project on domestic violence²⁴ – has shown, this phenomenon can only be understood through the social roles that men and women are destined to play,

which attribute decision-making responsibilities and control of resources to the former. We aim to treat domestic violence not only descriptively but also by considering the representations of the agents involved, which can contain different perceptions according to whether they are male or female. Nevertheless, they are based on an acceptance of common presuppositions, such as the subordination of women to male authority.

It is only through this perspective, which contextualizes domestic violence as part of gender relationships and as yet another mechanism of social control and preservation of the patriarchal order, that social acceptance of this phenomenon can be explained. Throughout our study we saw that fathers, family members, neighbors and even professionals from legal and social services institutions became accomplices to domestic violence by preaching acceptance or minimizing the complaints made by victims of violence. This is one of the reasons why many women feel intimidated and incapable of asking for help in exercising their rights to life and physical integrity.

Although gendered violence may be increasingly incorporated into the human rights agenda and is becoming increasingly recognized in universal models for equality and social justice, these models are ignored when applied to women.

The Increasing Visibility of the Problem and Political Will

The increasing participation of women and men in the struggle for respect for human rights has, to a certain extent, influenced the visibility of the problem of domestic violence. Campaigning strategies will only be effective if there is the political will to put domestic violence into its true perspective, given that it affects over half the population of the country. It is necessary to recognize publicly, and without any ambiguity based on cultural or traditional justifications, the unacceptability of gendered violence. Often public discourse condemning violence does not, in itself, generate change, but it may be decisive in facing up to the resistance of patriarchal institutions, since women have no real power to alter the situation.

It therefore becomes crucial that legal mechanisms are created for combating domestic violence, which, as has already been mentioned, must envisage a change in the political will of the government.

Our research has shown that there is an important relationship between domestic violence and the legal system. Currently there is no law that makes domestic violence a crime in Mozambique. Many women believe their spouses have the right to beat them and cultural pressures discourage women from taking action. As a result, domestic violence is only judged as a minor physical offence. In fact, the Penal Code²⁵ today has still not been updated with regard to punishment for bodily harm committed by one spouse against another or by parents against their children, the crimes of abuse, rape and procurement for prostitution, adequate protection for women who are victims of violence and the ill treatment of women within the family.

However, once again, the NGOs are playing an extremely important role by publicly defending women's rights and denouncing their abuse, both in public and private

arenas. For example, the recently approved Family Law may serve as a precedent on which future gains in gender-related legal reform can be consolidated.²⁶ In fact, the work carried out by a network of women's organizations has already succeeded in establishing domestic violence as grounds for divorce. Today, it is advocating new legislation to criminalize spousal abuse. The network is also seeking to enforce inheritance laws for polygamous unions. The Constitution states that all wives in a polygamous union should be treated equally when their husband dies and should inherit property. Yet only too often these women are left with nothing.

The Role of the Maputo Juvenile Court:²⁷ An Emerging and Localized Justice

In addition to women, domestic violence also victimizes children through lack of parental support or negligence and the psychological, physical and sexual abuse they may suffer.

The Maputo Juvenile Court is a good example of how the rights of children may be promoted through the combined actions of the NGOs and the General Attorney's Office, who have already brought many cases involving family conflicts before the courts in order to defend the rights of minors and their mothers.

Until 1998 less than one thousand juvenile cases were filed annually, but this figure rose in 1998 to 1,210, a figure that represented over half the civil cases filed in the city (2,182 civil cases).²⁸

It is essentially women (domestic employees, workers, etc.) who resort to the Maputo Juvenile Court in order to obtain alimony for children under 12 or to sue for divorce, as a result of a family separation.

The Maputo Juvenile Court responds to a specific demand in the city of Maputo, as a result of an increased awareness of women's and children's rights through access to the General Attorney's Office and some of the NGOs, such as the Mozambican League of Human Rights or MULEIDE. In a sentence, the promotion of child justice in Maputo is the result of a combination of four factors: the role of the NGOs in raising awareness of children's rights; the existence of a specialist court; the legal role of the Attorney's Office in this jurisdiction; and the speed of the proceedings.

Conclusion

In Mozambique legal representation and defense were nationalized after independence (1978), when private advocacy and legal representation were banned. Following the Peace Agreements and a change in the political regime, in 1994, private advocacy was once again sanctioned and the Mozambique Bar Association was founded. At the same time the National Institute for Legal Assistance (INAJ), which later became the Institute for Legal Assistance and Representation (IPAJ), was created with the aim of providing a state system for access to justice and the law for those who were unable to contract the services of a lawyer.

The legal services market may be defined as a market which contains few lawyers, almost all of whom are based in Maputo, offering services which are prohibitively expensive for the vast majority of the population.

The state system of access to justice and the law (IPAJ) does not cover the whole country either, since it centers on Maputo, functions poorly and is inefficient. We identified five major problems: inefficient leadership and management in the IPAJ; a lack of political commitment; a lack of financial and human resources; a lack of dialogue and links with the NGOs; and the *de facto* privatization of the system, as a result of which the IPAJ technicians operated according to market principles.

In Mozambique, access to justice and the law is therefore very selective – given the inability of the public legal defense system (the IPAJ) to provide an adequate service and to function efficiently and the difficulty of hiring lawyers due to cost and scarcity – so that the constitutional objective guaranteeing this right has yet to materialize.

The human rights NGOs are the most prestigious organizations in the eyes of citizens, due to the legal information and defense services they offer. Their geographical base is also distinctively different, since some, such as the Mozambican League of Human Rights (LDH), are represented in all the provincial and some of the district capitals. In 2003, for example, the LDH in Maputo accepted over 1,000 cases of varying types (labor, civil and criminal). These NGOs receive international aid and operate with a combination of lawyers and paralegal staff. The former carry out all the activities that are defined by law for their profession. The paralegal staff are responsible for providing supplementary legal information and support services and for extra-judicial conflict resolution.

The activities of the League have provided an impetus for the creation of other NGOs with identical aims. There are various organizations which defend the rights of the most vulnerable groups of society in general and the rights of women and children in particular.

The Maputo Juvenile Court responds to a specific demand in the city of Maputo and is essentially used by women to defend the rights of children under 12, and to sue for divorce, as a result of a family separation. The emergence of child justice in Maputo is the result of a combination of factors: the role of the NGOs in raising awareness of children's rights; the presence of a specialist court; the legal role of the Attorney's Office in this jurisdiction; and the speed of the proceedings.

In sum, the endemic lack of legal defenders is a feature of many African countries. On the one hand, for legal assistance to be provided effectively to the needy there must be enough trained defenders and they must be paid for the services they provide. On the other hand, it would be illusory to expect the Government to be able to pay civil servants in sufficient numbers, given the fact that the entire justice sector receives only a very small share of the overall state budget. Therefore, privileged legal actors must be involved in reforms, but must not be allowed to take them over, much less obstruct them.

The picture present in Mozambique is merely a much sharper and more severe image of what happens in other countries and continents. It is therefore important to avoid certain errors made elsewhere – with excessive corporate professionalism blocking reforms leading to increased dejudicialization or anything else that may affect the potential income of lawyers. Consequently, initiatives that combine the efforts of public institutions, NGOs, universities and private lawyers are extremely important, so that the most pressing demands can be addressed, especially in the criminal field where personal freedom is at stake.

Notes

- 1 On this subject, see also chapter 2.
- 2 National Service for Legal Consultation and Assistance.
- 3 National Institute for Legal Assistance.
- 4 Institute for Legal Assistance and Representation, approved by Law no. 6/94 of 13 September. The organic statute of the IPAJ was only approved a year later, in 1995 (Decree no. 54/95 of 13 December).
- 5 In Portuguese, *Ordem dos Advogados de Moçambique* – OAM.
- 6 i.e. with the aim of guaranteeing economically unprotected citizens the right to defence.
- 7 All Law Faculty graduates have to dedicate some time to clerkship before becoming full lawyers.
- 8 Currently, a legal technician is someone who has attended classes in a law faculty. He/she does not need to hold a Bachelor's degree to be admitted to the IPAJ (see below).
- 9 Since the late 1990s various new Faculties of Law have opened in the country. On this subject, see chapter 6.
- 10 The Southern African Development Community SADC – is a regional organization uniting fourteen countries from southern-central Africa, aimed at coordinating development projects. On this subject, see chapter 4.
- 11 The Ministry of Justice – which as an institution supervises the activities of the IPAJ – cannot even pay the minimum IPAJ operating costs at central and provincial level.
- 12 Also, over the last few years, the IPAJ Nampula office has been supporting another 20 legal technicians through regional governmental funding.
- 13 However, the statute of IPAJ clearly states that their members must give adequate legal assistance and aid free of charge for those who, for economic reasons, are unable to engage their own attorney (Article 8 of Decree no. 54/95).
- 14 *Liga Moçambicana de Direitos Humanos*, in Portuguese.
- 15 Due to lack of time and financial resources and because it had not been created when the research work was planned, it was not possible to develop the same type of work on the *Associação Direitos Humanos e Desenvolvimento* (Association for Human

Rights and Development – DHD), an organization whose formal objectives are identical to those of the MLHR. Moreover, since 2000 the activities of the DHD have declined dramatically for several reasons and the association has almost disappeared from the political landscape.

- 16 Paralegal Centers. The category of paralegal assistant was inspired by the experiences in several Third World countries where citizens without full technical training give legal support to fellow citizens – above all, the most needy – in situations where state and even private legal assistance is scarce. Paralegals dedicate themselves mainly to providing defence and legal assistance; in many cases they also develop conciliation and mediation activities, make new laws known (mainly in the field of human rights), denounce situations of arbitrary arrest, etc.
- 17 Maputo city has the status of a province; therefore it is divided into five municipal districts, previously known as ‘urban districts’.
- 18 The League’s activities have spread through Mozambique, through the complex networking of paralegal centers, both in the central and northern part of the country. Each of these regions constitutes a regional head office. Each regional head office controls various subordinate centers.
- 19 In 2002 the League had 20 offices spread across the country, employing a total of 40 paralegals and a significant number of activists.
- 20 Among the very active NGOs one could refer MULEIDE (Women’s Association, Law and Development), aimed at promoting and defending the legal rights of women, particularly as they pertain to improving social conditions and ensuring participation in the development process; ORAM (Rural Association for Mutual Support), and UNAC (National Peasants’ Union, coordinating various grassroots associations); these two main peasant organizations have been pivotal in the defense of land rights of peasants (women are the primary cultivators of family land in rural areas).
- 21 Reference to the World Conferences on Women, held in Copenhagen and Nairobi, which have contributed to the progressive strengthening of the legal, economic, social and political dimensions of the role of women (editor’s note).
- 22 Corresponding to the fourth United Nations World Conference on Women.
- 23 In relation to this, see the article by Meneses and Adam (1996).
- 24 This study was carried out under the scope of the program ‘All against violence’, initiated in 1996 by *Forum Mulher* (a Mozambican network of women’s organizations).
- 25 The current Penal Code, with several changes, dates back to 1886.
- 26 The new Family Law approved in 2004 raises the minimum age for marriage from 14 to 18, allowing women to inherit property in divorce cases. This legislation represents a step forward for the women of Mozambique, who have long suffered from profound discrimination. It also legally recognizes traditional marriages, which constitute the great majority of marriages in Mozambique.

- 27 In Mozambique, juvenile justice is administrated by outdated legislation dating from colonial times. Whether dealing with minors 'in moral danger', minors who are 'undisciplined or abandoned' or minors 'in conflict with the law', measures are always applied to protect and defend minors, seeking to prevent them from turning to a life of crime. Promoting the well-being of deprived, abandoned, ill-treated, neglected or traumatized children, as well as the education and correction of juveniles who commit crimes, therefore forms part of the instrumental, social control and resolution of litigation functions.
- 28 For 2002 and 2003 the figures are: 2,132 cases filed in 2002 and 1,764 the following year.