

ACCESS TO JUSTICE AND RULE OF LAW

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Abbreviations and Acronyms

- AMMCJ** – **Associação das Mulheres de Carreira Jurídica** (*Association of Women in Legal Careers*)
- CFJJ** – **Centro de Formação Jurídica e Judiciária** (**Legal and Judicial Training Centre**)
- CIP** – **Centro de Integridade Pública de Moçambique** (**Centre for Public Integrity of Mozambique**)
- UDHR** – **Universal Declaration of Human Rights**
- IPAJ** – **Instituto de Patrocínio e Assistência Jurídica** (**Judicial Patronage and Assistance Institute**)
- LDH** – **Liga Moçambicana de Direitos Humanos** (**Mozambican Human Rights League**)
- MULEIDE** – **Mulher Lei e Desenvolvimento** (**Women, Law and Development**)
- NGOs** – **Non-Governmental Organisations**
- CSOs** – **Civil Society Organisations**
- UEM** – **Eduardo Mondlane University**

EXECUTIVE SUMMARY

The proposed study focuses on certain key issues, the answers to which make up this executive summary:

a. Legal exclusion of a significant part of the population

It is sufficient to observe that most of the African population lives in the rural areas and, based on the fact that access to formal justice is more deeply rooted in the urban areas, it is easy to conclude that a significant part of the Mozambican population does not benefit from formal justice. This justice is a privilege for the urban population and, even in the large cities, not everyone benefits from quality formal justice. On the other hand, the high unemployment rate in Mozambique contributes to a significant part of the active population working in and living off the informal sector which, by its origin, constitutes an evasion from state rules. The people living in this sector (e.g., informal importers – commonly referred to as *Mukheristas*, informal market traders – “*dumba nengues*”, car washers¹, children working in the informal markets, etc.), do not benefit from effective legal protection, some because they are unaware of their rights and others because their trade relations fall outside of the legal system.

b. Lack of knowledge of rights

Citizens’ lack of knowledge of their basic rights and obligations is common. Recent research on the perception of human rights revealed that the people are unaware of the meaning of having a right and, even worse, they do not even know what their rights are. In this sense, we must agree with the currents of opinion (José R. Nalini) that defend that *the situation is different in relation to the **knowledge of Rights**, because in this case access to knowledge regarding rights should be generalised, even as a condition of its application. Today, this knowledge is seen as a right – **the right to have rights***. It is necessary, therefore, to bring about a mass influence

¹ See, for example, the Municipal Council of the City of Maputo that recently decided to forbid the washing of cars in the streets. Just in the 25 de Junho Square, estimates point to 200 car washers, some of whom have been carrying out their activity in that location for over 10 years. This public entity did not give these “*informal workers*” the opportunity to defend their rights. The prohibition was summarily enforced, simply being based on the fact that they were informal. No consideration was given to the fact that those individuals have fundamental rights associated with that activity. For that very reason, the urban services did not bother to arrange an alternative for those poor men. This is how people making a living from the informal sector are excluded from the legal protection that the justice system should guarantee for all citizens.

(through mass communication) of citizens' knowledge of this right as a prerequisite to access justice and fight against impunity.

c. Transparency of the legal system and access to information

The interpretation of the division of powers and the independence of the judiciary is used as grounds to get in the way of the judiciary's accountability. The transparency of the judiciary depends on the approval of *a law that regulates the accountability mechanism for this power. This law should consecrate a system for the assessment and monitoring of the legal system, as well as the level of "political responsibility" of the judiciary.* In fact, the independence of the judiciary does not mean political irresponsibility, since it is only a guarantee that in making decisions on specific cases, the Judges are free from external pressures. In this sense, there is nothing hindering performance indicators for the judicial sector from being legally consecrated. Taxpayers have the right to know what the justice sector produces.

On the other hand, the use of terminology that is clear and accessible to laypersons may work as a mechanism for transparency and accountability. The decisions of the justice administration bodies should be pedagogic (*by imposition of the constitution, the courts educate the people on voluntary compliance of the law*), which implies an objective, clear and convincing basis for the parties involved in the process.

d. Paralegals and Law Students

Training more Paralegals, placed within communities, could be an important mechanism to facilitate access to justice by the Poor. In Mozambique, the successful experience of the Human Rights League reveals the importance of the institutional model of Paralegals, who should be trained and guided by an institution that employs and supervises them. In areas where people have no resources to access justice, the Paralegals act as intermediaries between underprivileged citizens and the justice administration institutions.

On the other hand, the use of legal clinics, for example the legal clinic and the Human Rights Centre, both at UEM's Faculty of Law, has ensured the participation of Law students in activities for disseminating the laws and providing legal assistance to the needy. This activity could be more beneficial if done in partnership with Civil Society organisations, as is the case between UEM and the LDH. There is a need to influence the initiative through mass communication, involving other higher education institutions.

e. Financial alternatives for Lawyers to be able to represent poor clients

One of the best alternatives is to ensure that Lawyers provide assistance to the poor through Civil Society Organisations. If each Lawyer were to give an hour of his/her time to a CSO on legal assistance to the poor, we would have a more organised and efficient system. The Bar Association itself should be the one to establish partnerships with the CSOs.

- f. *Perspectives for expanding the judicial and legal mechanisms for government accountability in the provision of public services / if the allocation of such services is carried out to meet the needs of women / How to empower the poor to fight against the corruption and inefficiency that threaten their lives and livelihoods, starting with the government.*

Citizenship education focusing on active citizenship, i.e., citizenship which encourages and instils in citizens the capacity to intervene in political matters, such as *good governance, political accountability – through, for example, the electoral system, reporting corruption, etc.* In fact, we must start from the principle that only a strong civil society, based on educating its citizens on citizenship, and in encouraging associationism², will be able to make it possible to have advocacy in favour of eradicating poverty. In short, the right to participate in public matters or in matters of interest to some communities or social groups, consecrated in the administrative legislation, and the right to class action consecrated in the Constitution, are important means of allowing the poor to intervene in the defence of their interests.

Preliminary conclusions of the seminar with the Focus Working Draft

The work group is unanimous in concluding and recommending that the legal professionals namely Lawyers, magistrates, law officials, teachers, students, cultivators of law and other professionals working in the justice sector in general, should have knowledge of human rights. This knowledge should be translated in the integration of human rights standards in the legal activity. On the other hand, there is a need to create more conditions for free and quality legal assistance, with the recommendation being for public entities and civil society bodies to articulate/ coordinate their activities, particularly in the rural areas and in the informal sector, e.g., informal markets.

The work group also considers it both necessary and urgent to raise awareness among citizens through citizenship education on basic rights and obligations, with a view to improving legal conscience within civil society in general, as well as encourage active citizenship with a view to increasing citizens' capacity for intervention in public matters, particularly in the electoral processes.

The recommendation made to the State, through its representative institutions, is to work in continuous and progressive coordination with civil society, while civil society should perform its role of monitoring the performance of the State's institutions in meeting citizens' basic needs.

² In the Massingir District, we found an associative movement that guarantees a collective voice for farmers, particularly women, in access to land and agricultural production.

INTRODUCTION

The concept of access to justice raises crucial issues that deal with the need to create conditions to facilitate access to laws and to courts by *vulnerable* groups or people who, in relative terms, benefit very little from the established justice administration system. There are various groups among the people *vulnerable* in their access to justice, namely the elderly, women, children, informal sector workers, informal traders, etc. Normally, poverty is associated with these social groups, for whom the State guarantees, from a formal point of view, access to justice. However, in practical terms, and taking into consideration the reality of the Country, there are difficulties to be considered in materialising this fundamental right.

In the context of access to justice and the Rule of Law, the link between *exclusion, poverty and rights* is inevitable. In fact, poverty contributes to the weak knowledge of rights, limits economic capacity for access to courts and, on the other hand, the lack of exercising the right of access to justice could perpetuate poverty inasmuch as the violation of poor peoples' rights could remain unpunished. This impunity becomes alarming when it refers to the relationship between the State and citizens, where it is clearly evident that access to justice is a foundation of the Rule of Law.

If we consider the social effects resulting from the unsound management of *res publicae*, corruption and a lack of accountability in Public Administration, facts largely reported by the media and in civil society reports³, we see how access to justice by the social strata directly affected could contribute to respect for the Rule of Law. For example, the South African Government was forced to change its HIV/AIDS policy as a result of civil society exercising its right to access to justice. However, in the case of Mozambique, people's lack of knowledge of their rights and the scarcity of information results in human rights violations remaining unpunished due to the difficulties in accessing justice, mainly with significant consequences in materialising the right to development.

Therefore, the core problem begins with the lack of knowledge of this right by the more disadvantaged populations, some of whom live fundamentally based on the informal sector and who do not have solid and effective activity regulating and conflict management mechanisms. On the other hand, the problem also stems from the fact that justice is expensive, compared to the precarious economic and social conditions in which most of the Mozambican population live. Lastly, the courts themselves are still unprepared to operate as a vessel to fight social inequalities and poverty.

³ Cfr. LDH's reports

II. LEGAL FRAMEWORK AND THE DIFFICULTIES IN ACCESSING JUSTICE AND RULE OF LAW

a. Constitution of the Republic

i. Access to Formal Justice – State Normative System

The Constitution of the Republic offers a legal framework which allows for *legal empowerment of the poor*. In effect, the Constitution establishes, in article 62, the right to Access to the Courts, determining that the “*State guarantees citizens’ access to the courts and guarantees defendants the right to defence and the right to judicial patronage and assistance.*” Compliance with this obligation necessarily entails the:

- *Creation of conditions for access to the right* – with this being understood as the obligation that the State has in guaranteeing the dissemination of legal information, as well as the judicial training of citizens;
- *Duty to create courts* accessible to all tiers of the population. These courts can be legal courts, community courts or even the facilitation of operating informal conflict resolution mechanisms.⁴
- *Right to judicial patronage and assistance for citizens* – ensures that economically disadvantaged citizens can be assisted by a legal representative, as well as the right of not being denied justice due to an insufficiency of funds. This guarantee implies not only the creation of public institutions, like IPAJ, but also facilitating the operation of organisations providing judicial patronage and assistance. This facilitation could be achieved in various manners, from direct support by the State or granting of certain benefits, namely tax benefits, exemption from the payment of fees in the use of public services, etc.

ii. Access to Informal Justice – Legal Pluralism

On the other hand, article 4 of the Constitution of the Republic acknowledges legal pluralism, i.e., it acknowledges the existence of other norms that regulate social relations alongside state law, opening up an opportunity for the legal empowerment of all segments of society. In the terms of the referred-to constitutional precept, “*The State acknowledges the various normative and conflict resolution systems that co-exist in the Mozambican society insofar as they do not contradict the fundamental values of the Constitution.*”

In fact, as mentioned by Amy Tsanga in her work *Taking the law to the people*, 70% of the African population lives in rural areas. In these areas, state law is practically unknown by the populations, who regulate their relations based on customary norms.

⁴ The new law of the courts allows, to a certain extent, for the possibility of bringing justice closer to the citizens

Discussion

*From a constitutional point of view, a first challenge is legal empowerment. First, it has to do with the need to guarantee that the state right is acknowledged and applied in benefit of everyone. This challenge should lead us to reflect on the manner in which we officially make legal information public, in a country where a significant part of the population is illiterate. Should the **Government Gazette** continue to be the only instrument for the official dissemination of laws? Should the State not create a public service responsible for disseminating legislation in coordination with civil society organisations?*

The second challenge is to create the conditions in order for non-state normative and conflict resolution systems to be effectively applied. For this, it is necessary to have knowledge of the existing normative systems, since legal pluralism is not limited merely to customary law (and even this one is not widely known). In effect, if we look at the informal economy sector, taking as a basis the large informal markets in the cities, we find that the people who work there establish relations based on agreements and alliances which comprise their normative system. For example, the norms regulating the commonly-known “xitique” (informal savings system), make up a financial normative system parallel to the State system. Is it possible to acknowledge these norms, within the boundaries permitted by the constitution? How do we guarantee a conflict resolution system for these people?

*The **training and creation of Paralegal centres / or a community legal service**, as well as Judges and community courts within certain sectors of society could be an opportunity to guarantee access to justice in the informal sector and, in general, to all vulnerable segments of the population. It is not enough to think of community courts working out of neighbourhoods; it is also necessary to take into consideration the different social sectors like markets, interest groups, etc., when devising them.*

There is also a need to strengthen the traditional authorities that use customary practices to resolve conflicts brought before them in their jurisdictions. These agents, who promote an alternative justice, need to have basic legal knowledge in order for the application of the custom not to go against universally accepted values.

b. International Conventions.

The fact that Mozambique has solemnly stated, in the Constitution, that the application of a fundamental rights regime should be done in accordance with the UDHR (and by inherence the entire United Nations system for the protection of human rights, made up of the various conventions ratified by Mozambique) and the African Charter, is a good basis to uphold the State's obligation to promote equal access to Justice for all.

Discussion

From a practical point of view, it is found that there is a huge deficit in Mozambique in the application and integration of the international conventions in the activities of national institutions. Formally, there is little to be said, but in practical terms, for example, the courts almost never pass a sentence taking the international conventions into consideration.

This is the result of many factors: firstly, the almost non-existent legal training in human rights of the professionals (Lawyers, Magistrates, etc.). Secondly, the lack of dissemination of the legal culture of human rights in the different sectors and in Public Institutions.

Until the professionals in the legal area accept the importance and the role of the conventions that promote and protect human rights, particularly of the underprivileged groups (women, children and the poor), it will be difficult for public authorities to provide an institutional contribution to legal empowerment. Therefore, it is necessary to have en masse training of Lawyers to take on the important role entrusted to them in the promotion and protection of human rights. The idea that within each Lawyer there is a potential defender of human rights must be instilled. Lastly, the integration of the idea of human rights in the activities of the court and other justice administration institutions must be encouraged.

c. Laws

iii. Judicial Patronage and Assistance

The intention of the Law that creates IPAJ is to guarantee, through this institution, access to justice for the economically disadvantaged population. This law, following on from what already took place in the extinct National Judicial Assistance Institute, creates the figure of Legal Technician and Legal Assistant that, not being true Lawyers, but having specific legal training, were conceived as guarantors of access to formal justice for the poor.

Formally, Legal Technicians and Legal Assistants are very important figures in the *legal empowerment of the poor*, namely as guarantors of the right of access to justice. However, practical experience has shown the shortfalls of this option.

Firstly, there is the fact that these Technicians and Assistants never felt that they were community agents for *legal empowerment of the poor*. This situation resulted in the technicians and assistants very quickly turning into “Lawyers”, and demanding fees from the people for whom they were providing legal assistance.

Discussion

*Judicial patronage and assistance could be object of other community-based alternatives, with **Paralegals** being supervised by civil society organisations. In contrast to the technicians and assistants, the Paralegal is an agent that comes from the same community he/she serves. The vision of the work carried out is of human rights, facilitating citizenship education, as well as the mediation and management of conflicts within the community itself. This could be a good solution for legal empowerment.*

In additional to conventional training, Paralegals could be offered the possibility of accreditation to be able to represent economically disadvantaged persons in those areas where there are no Lawyers and only District Courts.

iv. Status of the Bar Association

The Status of the Bar Association imposes on Lawyers the duty to make available a number of hours for legal assistance to the poor. However, experience has shown that there are difficulties in implementing this legal requirement. It is necessary to understand that a Law Firm is normally conceived to attend to middle class clients. It is necessary to rethink other modalities of legal assistance for the poor, which could facilitate the controlled intervention of Lawyers in providing legal assistance to the poor.

Discussion

Lawyers could easily represent the Poor if they were to sign cooperation agreements with Civil Society Organisations that provide Legal Assistance. It is easier for a Lawyer to have one day a week, for example, to spend at an Organisation of this kind to provide legal assistance to the Poor. In turn, this organisation would supervise the Lawyers’ performance in complying with his/her Statutory obligation to Assist the Poor.

v. The Legal Costs Code

The Legal Costs Code allows for exemptions from paying first costs and charges of the court for those who prove they are poor. In formal terms, it would be a form of ensuring that justice is not denied by reason of financial incapacity, taking into consideration the different modalities consecrated in the law. However, the mechanism of legal assistance benefits is not very transparent and discerning, since there are many cases where people plead in matters involving large sums of

money, but are impoverished at the time they address the court⁵. However, it is very rare to benefit from legal assistance in these cases. On the other hand, the courts do not facilitate the exemption from paying charges of the court, although in many cases they will allow exemption from paying first costs.

Discussion

*It is necessary to reinvent some form of funding Justice. Firstly, formal Justice should be treated as a public service. As such, the public justice service should be regulated by the universal principles of access to public services, namely **equal access, free services, as well as the modifiability of the public service in function of society's evolution.***

Secondly, taking the principles mentioned above as a basis, it is necessary to look at the fees for accessing justice as a source of unequal treatment of people. Those who do not have the financial means to pay for the charges of the court run the risk of becoming judgement debtors. (For example, in case X, assisted by LDH, Mr. A. Bango, is an elderly poor person who, divorced from his wife who kept the family's assets, appealed to the court to establish alimony to be paid by his ex-wife. This alimony would be paid for by the rent charged for the house (belonging to the couple) leased by the ex-wife for approximately 1000.00 USD. However, the court, that in its decision did not award alimony, notified Mr. A. Bango to pay Court charges to the value of 3,000.00 MT. Now, how can a person who goes to court to apply for alimony due to an incapacity to cover own expenses, afford to pay for court fees? This means that Mr. A. Bango is being treated unequally and unfairly.

Treating the Courts as a public justice service means guaranteeing access to them in the same terms in which access to health and education is guaranteed in this country, with access to these services being done through the payment of symbolic fees. Why does justice have to be any different?

Thirdly, court fees should be linked to the value of the cases brought before the court. The high prices of accessing the courts very often results from the way in which the court expenses are calculated. Fixed fees for access to justice could be established.

⁵ For example, in a case assisted by the Legal Assistance Office of the LDH, an elderly ex-businessman, whose business was alienated by the State by default, was denied his application for legal support benefit. The grounds used by the court were that since the matter that brought him before the court was of a commercial nature, he was not entitled to legal support and, as a result, was ordered to pay the value of 100 million Meticaís of the old currency. This case is still pending today because the petitioner is unable to pay that amount, despite having provided proof in the form of a statement from the finance department that he no longer carries out a commercial activity.

III.- OTHER DIFFICULTIES IN ACCESS TO JUSTICE BY THE POOR IN MOZAMBIQUE

In addition to the difficulties of legal empowerment and access to justice mentioned above, there is also the following:

3.1- Corruption in the Justice Administration Sector

Corruption⁶ which is translated essentially in different types of bribes in justice administration, is clearly a significant obstacle in the access to justice. The practice of corruption is generalised across the Justice Administration sector, namely from the courts, through to public prosecution, police and lawyers. Lastly, the discussions on the development of justice and good governance in the Country focus fundamentally on the problem of corruption within the sector. As an example, the study carried out by the Centre for Public Integrity of Mozambique on the corruption in the Education, Health and Justice sectors and the transparency, risk areas and opportunities for corruption in six Mozambican municipalities⁷, as well as the Mozambican Human Rights League's 2006 Annual Human Rights Report, clearly show that corruption in the justice sector is rampant.

Corruption in the Justice sector has a direct effect on the poor, since only those who have resources are able to pay bribes. It is in this sense that corruption is an obstacle that makes it difficult and up to a certain point prevents the poor from gaining access to justice.

Discussion

The strengthening of the justice sector internal monitoring system could contribute to a reduction in the foci of corruption. Judicial inspection can and should be rethought, since only the strict inspection of the quality of the judges' rulings will be able to eliminate the manoeuvrability for negotiated rulings. On the other hand, the creation of justice observatories with a legal status that enables them to question the performance of the justice sector could be an important contribution to the fight against corruption. In short, it is necessary to create a politically responsible legal system in the terms foreseen by Montesquieu: if the courts decide in the name of the people they should be held accountable to the people for what they are doing.

⁶ Cfr. *National Survey on Governance and Corruption*, 2003. *The National Baseline Survey on Governance and Corruption*, UTRESP, Final Report, 2005. *The Government's Anti-Corruption Strategy*, 2006. Reports from the Centre for Public Integrity of Mozambique (CIP), namely: *Brief analysis on the Government's Anti-Corruption Strategy, on the Salary Dilemma, on the Codes of Conduct and on the Urgency of Sector Action Plans*, 2006, and *on the Report on the Study on Transparency, Risk Areas and Opportunities of Corruption in Six Mozambican Municipalities*, 2007.

⁷ Municipalities of Chibuto, Chimoio, Dondo, Gurue, Nacala and Vilaculo.

3.3- Denial of justice due to protracted procedures

One of the factors affecting the quality of justice in Mozambique is its incapacity to meet the demands of the citizens within a reasonable time. When taken, court decisions arrive too late for the purposes for which they were intended by the citizens. In its annual report the LDH reports the case of an elderly lady who, having been dispossessed of the land where she produced food for herself and her family, took the case to court in 2002. It so happens that at the end of 2006, this case had not yet been sentenced and the people who usurped the land had already built houses on the land being disputed. For this citizen, what is the worth of a judgement that is passed in this case if what she initially intended to avoid has already taken place? It is obvious, therefore, that the tardiness of justice is a form of injustice.

3.4- The existence of unfair and extremely complex laws

The approval of laws not at all inspired on the Mozambican cultural reality creates an obstacle in the access to justice that should not be underestimated, fundamentally, because this dichotomy discriminates against the more vulnerable population groups, namely women and children. This situation is seen essentially in relation to family and social welfare legislation.

On the other hand, the language very often used in the laws is unintelligible to laypersons. This complexity creates a limitation in the access to justice, since it restricts the capacity to understand the rights and obligations.

Discussion

Exercising the right to participate in the legislation preparation process could correct these situations. Laws should be prepared with mass participation by citizens, particularly those whose interests are regulated and are, as such, affected by these laws. This participation basically requires encouraging an associative movement aimed at intervening in the preparation and discussion of laws.

3.5- Preference for Formal Justice and not material justice

Another reality creating a barrier in the access to justice is the lack of meshing between rights as the means and justice as the end. LDH and other institutions, lawyers, etc., have frequently denounced the fact that the sentences passed by some Judges are extremely formal and in no way relate to material justice. In many cases, the court decisions fail to analyse the issues in detail, being limited to deciding on formal matters of little importance. *An example of this is the case of a citizen whose house was usurped by her ex-husband, with the complicity of a district court. After requesting the intervention of the Public Prosecutor, this institution applied to the Supreme Court for an annulment of the sentence passed by the district court. After a period of approximately four years, the*

decision of the Supreme Court was that it could not consider the application submitted by the public prosecutor since the entity that signed the application in representation of the Attorney-General of the Republic did not attach proof of powers! Formally, the decision is unquestionable. But from a viewpoint of material justice it is repugnant. Were there no other ways of overcoming that merely formal fault?

3.6- The complexity of the legal language as a barrier in the access to justice

The court decision is a lesson and, as such, should be educational. And like a Law lesson, it can be clear, attractive and effective. Or it can be obscure, boring and flat, being limited to the boundaries of the process in which it was rendered.

Clarity is the courtesy of the philosopher, said José Ortega Y Gasset. And clarity, *for which it is necessary to acknowledge a feature of excellence in the matter, is in itself undeniably persuasive. It is no less useful when the lawyer wants to convince the judge than when he wants to justify his ruling.*

It becomes necessary to acknowledge that the hermeneutics of language makes access to justice difficult, since *legal language has, in the opinion of the public, a bad reputation.* The judges are not the ones responsible for this language – it is derived from the law and from traditions. However, the judge could adopt a different structure, without neglecting correctness, where logic, simplicity of theory and vernacular elegance come together. Let us admit our mistake: *The court decision is not an academic dissertation, but an act of utility, of specific application. It is necessary, from the start, for it to be fully intelligible and those to whom it concerns must be able to understand it without having to resort to the Gran Larousse in nineteen volumes.*

Clarity can do much to broaden the access to justice, since it facilitates access to the Law. And an accessible Law is, first, an intelligible Law. Clarity is the focal point of all recommendations that could be made to those who make use of the legal language. Perfect clarity is indispensable: *at the same time as paying attention to the words, it should be an expression of thought.* It is acceptable to conclude *that that which is not clearly expressed was not clearly thought.*

Each and every judge should endeavour to achieve this, since they also pass judgements.⁸

⁸ Nalini, José Renato. *New perspectives of access to justice.* www.jusnavigand

IV.- SOME ALTERNATIVES FOR LEGAL EMPOWERMENT OF THE POOR

4.1- Awareness of rights

Access to justice presupposes the knowledge of citizens' basic rights and obligations. This knowledge implies citizenship education through actions to disseminate the laws.

Discussion

Various strategies can be used in the dissemination of laws, such as: Training of Paralegals, who then dedicate themselves to providing citizenship education. On the other hand, the Paralegals could be organised in Paralegal Centres, operating as institutes for legal information and counselling for citizens.

Another strategy is to include community citizenship education activities as components of legal training in Mozambican Universities. The integration of students in these activities is beneficial in two ways: on the one hand, it facilitates changes in attitude of young lawyers with regard to people's social problems. On the other hand, the Law students receive more training and legal information, which contributes to quality citizenship education.

4.2- The Issue of the Publication of Legislation

The official mechanism for the publication of laws in Mozambique is inefficient and does not allow access to all citizens. Firstly, because not all people have the financial resources to purchase the legislation, and secondly, and most important, because not all Mozambicans can read and write. These two difficulties, which exclude the poor from accessing legal information, could be overcome by taking some of the following measures:

Discussion

Facilitate the dissemination of legislation by civil society organisations through written press, radio and television.

4.3- The inclusion of the community and civil society in the legal reform

The example of the review process of the Land Law, in 1997, should be followed in almost all legislative processes. The participative process resulted in the Land Law being practically incontestable, since practically all opinions were included.

Discussion

It is necessary to discuss the best modalities for participation in the legislative process. Associationism is, without doubt, one of the best modalities, but it is obvious that there will be others, namely the involvement of academics.

4.4- The need to strengthen the community courts and local authorities

The legal opening for the creation of community courts that rule according to good sense and equity, taking cultural values as reference, is the most important opportunity for empowering vulnerable groups. The same opening exists with regard to the role of the local authorities (*traditional and administrative*) in conflict mediation and resolution.

The role played by these institutions in conflict mediation and resolution within the vulnerable population is unquestionable. Firstly, because in many places where there are no formal courts, it is the community courts and the local authorities that decide the conflicts. The Study carried out in Massingir showed us that, normally, in social conflicts, conflict mediation and resolution begins with the local authorities, then move on to the community courts, and only as a last resort is the case taken to a judiciary court.

However, there is inadequate legal training of the people responsible for heading the courts. Community court officers and local authorities should be minimally trained, or else their decisions could very easily be disputed as a result of violations of the basic principles defined in the Constitution.

More importantly is that strengthening the community courts and traditional authorities is a form of guaranteeing the quality of the justice within the reach of the vulnerable population.

4.5- The need to create a Community Legal Service

Community legal service is made up by a group of institutions that, not having been created or funded by the State, provide access to justice at community level. This community legal service is based fundamentally on the actions of civil society organisations, facilitating communication between the formal justice and the alternative mechanisms of access to justice.

The community legal service can, through conflict mediation and resolution, give an important contribution in the access to justice. On the other hand, by providing legal assistance, the community legal service promotes legal counselling at community level for those people who do not have the means to hire lawyers. The Paralegals, Law Students, where available and human rights activists, etc., play an important role in these types of services.

4.6- Exercising the right to Class Action en masse

It is a Law consecrated in the Constitution⁹ and one which constitutes an effective mechanism to combat poverty and realise the right to development, inasmuch as it easily allows for easy defence of collective rights, such as the defence of the right to development by the poor. Class action can be a powerful tool for society's intervention in the solution of many social problems, such as poverty.

4.7- Creating a culture of human rights within the operations of public institutions

The creation of a human rights culture resides in the capacity that the institutions have to integrate the content of human rights into their operations. For this purpose, it is necessary to carry out training activities in human rights issues for Legal Professionals.

The inclusion of human rights on the activity agendas of public institutions is an important factor in respecting the Rule of Law, since human rights appear at the top of the list as a limit to the State's power.

RECOMMENDATIONS OF THE SEMINAR WITH THE “FOCUS WORKING GROUP”

I- Citizens' exclusion from access to justice and to institutions of democracy due to a lack of registration

1. There is a need for greater expansion of institutions authorised to register citizens through the “*decentralisation*” of the activity, with the possibility of including local administration institutions, as well as other institutions such as churches and community associations, in performing registrations, as long as these are controlled by the State;
2. Expanding registration campaigns through competent state institutions (e.g., Registration brigades in the *home, hospitals, etc.*);
3. Need to take advantage of the database for a general population and household census, to determine who/ how many people still need to be registered and the respective locations;
4. The electoral campaign needs to be more educational;

⁹ See article 81 of the CRM.

5. There is an urgent need for a computerised central database in order to avoid duplicate registrations and non-existence of files, as well as to facilitate the registration process in the different regions;
6. Documents must be produced using materials that are impermeable and not easily deteriorated (e.g., Identity Documents) and the acquisition of documents or registration of people should be seen in a more utilitarian light;
7. Training and raising awareness among parents and community leaders of the importance of registration.

II- Lack of knowledge regarding rights and the workings of the legal system

1. It is important to prioritise citizenship education, firstly in relation to citizens' basic rights and obligations in their everyday relations; and secondly, there should be en masse dissemination of human rights. Citizenship education strategies involve preparing educational materials (*posters, brochures, audio and/or visual materials, plays, etc.*) using easily understandable language, with laws being translated into local languages;
2. The creation of the community legal service (or information counters) in the neighbourhoods, markets and schools could facilitate the dissemination of rights and legal empowerment of the poor, and provide for easy articulation between the formal and informal sectors;
3. Massification of community courts, as well as training their staff, is an important measure to facilitate access to justice by the vulnerable groups and, in general, close the gap between the public legal service and the user;
4. Training of paralegals within communities and informal markets is an important recourse to guaranteeing access to justice for the people who are excluded due to their social condition of illiteracy or poverty;
5. Training on human rights issues is required for civil servants and legal professionals in general.

III- Transparency of the legal and judicial system

1. Simplification of legal procedures in order to combat complex and protracted justice;
2. Give credibility to justice administration institutions through periodic accountability, greater accessibility to their decisions in terms of language, institutionalisation of the duty of public information, etc.;
3. Increase citizens' trust in the justice administration system by guaranteeing that the competent institutions rule on lawsuits within a reasonable time;
4. It is necessary to create Justice observatories to support Judicial Supervision in monitoring and assessing the Justice sector's performance;
5. Greater clarity in determining the court fees and the legal costs code should reflect the socioeconomic conditions of the target group;
6. Encourage and prioritise recourse to the mediation, conciliation and arbitration system before resorting to the actual courts;

7. Award the community courts a relatively broader decision-making role, with its decisions being enforceable as long as its operation is carried out under the supervision of the State;
8. Need to train community judges to increase their credibility and to be able to better serve the interests of the population.

IV- Paralegals and law students providing legal services

1. The non-existence of the status of paralegal is of concern in this activity since, in legal terms, it is not known in Mozambique who the paralegals are, what their responsibilities consist of, and what the procedural limits to their activities are. It is recommended, therefore, that this group of professionals be legally acknowledged, with this acknowledgment taking on the form of equating them to legal technicians or assistants;
2. Need to determine the number of existing paralegals, their levels of education, type of work performed in parallel with the formal system. It is important to perform a statistical survey of the real situation of these paralegals;
3. The standardisation of educational contents, as well as encouraging specialised training for paralegals taking into consideration the different areas of professional activity has shown to be extremely important (e.g., land issues, family conflicts, illegal detentions, etc.).

V- Judicial Patronage

1. Propose the approval of laws that facilitate access to justice;
1. The Bar Association should play a more proactive role in supervising and sanctioning its members who violate the professional duties of facilitating access to justice for the poor. The model of judicial patronage and assistance offered by the members of the Bar Association needs to be rethought. This discussion requires cooperation between the bar association and other associations providing legal assistance;
2. Train final year Law Students and Trainee Lawyers in providing free legal assistance and services;
3. It is necessary to open the Faculties of Law to serve the needy population through their legal clinics. And, in this context, students' participation in community legal services should be encouraged by integrating this subject in the course syllabus.

VI- Disputes relating to access to land

1. Training and empowering paralegals and community leaders, and community citizenship education on land and other related legislation could contribute significantly to the easy and peaceful resolution of land-related conflicts;
2. Encourage interaction between the various structures at community level (e.g., district and provincial administrations and municipalities).

3. Disseminate and make use of legal pluralism in the resolution of conflicts relating to access and use of land.

VII- Other recommendations within the scope of public institution accountability

1. Identification and creation of essential public services attending to the specificities of gender and children, and other vulnerable groups;
2. Training and information for citizens on the legal system and the basics of the Rule of Law, may enable citizens to participate in public matters;
3. Greater strictness in the selection of candidates for justice administration services (e.g., dedication, preparing stricter codes of conduct);
4. Greater strictness in the supervision of the public administration;
5. Creation of mechanisms to encourage and reward good professionals (e.g., performance incentives);
6. Creation of mechanisms to ensure the safety of citizens reporting cases of corruption and poor service provision by public services (e.g., law on the protection of anonymity);
7. Encourage and facilitate the creation of associationism and a proactive civil society (e.g., use of class action);
8. Support the publicity of the outcomes of corruption proceedings and denounce the corrupt, regardless of the individual in question.

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