



## Country Report

# MOZAMBIQUE

JULY 2009

By Fernando dos Santos, Julieta Nhana and Filipe Sitori

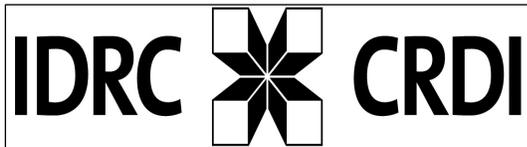
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## **Executive Summary**

The majority of the Mozambican population lives below the threshold of poverty, and levels of illiteracy are extremely high. There can be no doubt that access to knowledge (A2K), and especially to learning materials, is fundamental to achieving a reduction in the levels of illiteracy.

Statistics show that there are more than 4 million students enrolled in primary schools, whereas only 56 000 are enrolled in university. Considering the rates of poverty in Mozambique, the government undertook to provide books free to primary school students. However, costs for secondary and university education are still borne entirely by students and their families.

There are at present three main obstacles with regard to access to learning materials: the cost of the learning materials, a lack of public libraries combined with limited resources in existing libraries, and a weak publishing industry. This study has found that the copyright legal framework, if not reformed, could become another obstacle to learning materials access.

Mozambique is bound by international obligations for the protection of copyright, and adheres to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) of the World Trade Organisation (WTO). As a least developed country (LDC), Mozambique was not bound by TRIPs until 2006; this deadline was later extended by the Member States of the WTO with respect to intellectual property rights in general until 2013, and with respect to pharmaceutical patents until 2016. Nevertheless, the country undertook concrete steps to comply with TRIPs long before the scheduled deadline, voluntarily establishing a legal and institutional framework on copyright. Indeed, as far back as 1997, the government enacted a resolution authorising ratification of the Berne Convention for the Protection of Literary and Artistic Works (hereafter, the Berne Convention) of 9 September 1886 and its subsequent revisions and amendments. Four years later in 2001, Mozambique's first Copyright Law was passed, revoking the previous Copyright Code enacted in 1966 during the colonial era (Mozambique became independent in 1975).

In terms of the institutional framework, the functions of the National Institute for Books and Records (Instituto Nacional do Livro e do Disco), created in 1975, were expanded to include a new Copyright Office in 2001. Even earlier, in May 2000, the collective management society for Mozambique, Sociedade Moçambicana de Autores (SOMAS), was established.

In order to facilitate access to knowledge, TRIPs allows some flexibilities – such as those of scope and duration, and limitations and exceptions – with regard to copyright law. Adequate use of these flexibilities can increase opportunities for access to knowledge and, especially, to learning materials.

Other specific elements in a country's copyright law or other laws/policies may also be relevant to access to knowledge, such as measures to facilitate access to knowledge by disabled people and to promote the use of information and communication technologies (ICTs) in the learning/knowledge environment.

Among other things, this research project explored how far the Mozambican copyright legislation has gone in terms of use of the TRIPs flexibilities that have the potential to promote greater access to knowledge.

The research followed the methodology defined in the *ACA2K methodology guide*, which called on country research teams to collect evidence to answer the overarching research question of the study: ‘To what extent is copyright fulfilling the objective of facilitating A2K in the study countries?’ In terms of the ACA2K methodology, a doctrinal review was undertaken of legal instruments, both national and international: namely an examination of national statutes, regulations and policies and international instruments ratified by the Mozambican Government. Some secondary materials were also reviewed, though works on the Mozambican legal system are scarce. In addition, the ACA2K methodology required the Mozambique research team to attempt to analyse the effects of the copyright legal framework on lived realities – through conducting qualitative impact assessment interviews with relevant stakeholders. The interviews involved 12 people from three different categories, namely: two from government departments, four from the rights-holders community and six from the education community.

The study found evidence that the legal framework for copyright in Mozambique is not conducive to access to knowledge. But at the same time there is evidence that the legal framework is largely ignored. Thus, while the Copyright Law does not provide the necessary clear exceptions and limitations for education/learning purposes, the law is at present not implemented, thus ironically allowing a certain measure of access. Indeed, if the set of copyright provisions currently in place were fully applied, they would likely significantly hinder access to knowledge and exclusively benefit rights-holders. But on the ground in everyday reality, people do not view copyright law as denying their access to knowledge, as they appear to behave as if there is no copyright law in force.

The conclusion arrived at through this research is that it is desirable for Mozambique to proceed with a reform of the copyright system in order to introduce, clarify and implement exceptions and limitations and other copyright flexibilities that will promote access to knowledge (and learning materials in particular). In the absence of such reform, a drive towards enforcement by rights-holders and enforcement bodies could threaten access to learning materials in the country.

## 1. Background

### 1.1 Country History, Politics, Population and Economics

Mozambique is a multicultural society, having attracted different ethnic groups at different times in the history of the country.

Bantu speakers migrated to Mozambique in the first millennium, and Arab and Swahili traders settled the region thereafter. It was explored by Vasco da Gama in 1498 and first colonised by Portugal in 1505. By 1510, the Portuguese had control of all of the former Arab sultanates on the East African coast.

Guerrilla activity led by National Front for the Liberation of Mozambique (FRELIMO) began in 1964, and became very effective by 1973. A cease-fire was signed between FRELIMO and Portugal in September 1974, and after having been under Portuguese colonial rule for 470 years, Mozambique became independent on 25 June 1975 and Samora Moises Machel became the first president. President Machel died in a plane crash in 1986, and was succeeded by his Foreign Minister, Joaquim Chissano.

Soon after independence, the government became locked in a paralysing war with anti-government guerrillas, the Mozambique National Resistance (MNR, or RENAMO), who were backed by the white minority governments in South Africa and Southern Rhodesia (now Zimbabwe). A cease-fire agreement signed in October 1992 between the government and RENAMO ended 16 years of civil war. In 2002, President Chissano announced he would not seek a third term. FRELIMO's candidate, independence hero Armando Guebuza, was elected president and sworn in on 2 February 2005.

Mozambique is located in Southern Africa with an area of 790 380 square kilometers. According to the last Census carried out in 2007, the population was 20 530 714 inhabitants.<sup>1</sup> More than 50 per cent of the population was aged 6-24 years and the majority (52 per cent) were women.<sup>2</sup>

The principal ethnic groups are, in the north, the Yao, Makonde, and Makua; in the centre, the Thonga, Chewa, Nyanja, and Sena; and in the south, the Shona and Tonga. Small numbers of Swahili live along the coast. People of European, mixed African and European, and South Asian descent make up less than 1 per cent of the population. About 40 per cent of the inhabitants of Mozambique are Christian (Roman Catholic and Zionist Christian), while about 18 per cent follow traditional religious beliefs, and another 18 per cent are Muslims (most of these living in the north). Although Bantu languages are widely spoken, Portuguese is the official language.

In terms of economic performance, Mozambique has had a gross domestic product (GDP) annual growth rate in the region of 7 per cent for the last 10 years.<sup>3</sup> However, Mozambique is

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<sup>1</sup> Instituto Nacional de Estatísticas (2008). Available at [www.ine.gov.mz](http://www.ine.gov.mz) [Accessed 15 March 2009].

<sup>2</sup> Assembleia da Republica, Resolução n° 16/2005, Aprova o Programa Quinquenal do Governo para 2005- 2009, at 168. Available at [http://www.portaldogoverno.gov.mz/docs\\_gov/programa/Plano\\_Quinquenal\\_%20do\\_Gov\\_Moc\\_2005\\_2009.pdf/viiew](http://www.portaldogoverno.gov.mz/docs_gov/programa/Plano_Quinquenal_%20do_Gov_Moc_2005_2009.pdf/viiew) [Accessed 7 June 2009].

considered to be one of the poorest countries in the world, with a per capita income of about US\$310 per year.<sup>4</sup> About 70 per cent of the population lives in rural areas. However, due to heavy public investment in education, health and water provision programmes, the poverty rate was reduced from 69.4 per cent in 1997 to 54.1 per cent in 2003.<sup>5</sup>

The national illiteracy rate in Mozambique is 53.6 per cent, but this rate is higher in rural areas (65.7 per cent) than in urban areas (30.3 per cent). The illiteracy rate among women is 68 per cent. The capital city of Maputo shows lower illiteracy rates, with illiteracy at about 15.1 per cent, while the remote province of Cabo Delgado in the north registers 68.4 per cent.<sup>6</sup> The government programme for 2005 to 2009 established a goal of reducing of illiteracy rates by 10 per cent.<sup>7</sup> The Strategic Plan for Education and Culture 2006-2011<sup>8</sup> sets as a target ‘provision of primary education school to 97 per cent of the population in 2010.’

## 1.2 Education System

The National Education System in Mozambique was defined in 1992 and provides for three different kinds of education:<sup>9</sup>

- i) Pre-School System – for children below six years.
- ii) School System – which is divided into:
  - General system: primary and secondary school;
  - Technical and professional system; and
  - University and equivalent.
- iii) Special System – which consists of:
  - Special education for the disabled;
  - Vocational education for highly talented people in different areas;
  - Adult education;
  - Distance learning; and
  - Training for teachers.

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<sup>3</sup> World Bank ‘Mozambique at a glance’ (2008). Available at [http://devdata.worldbank.org/AAG/moz\\_aag.pdf](http://devdata.worldbank.org/AAG/moz_aag.pdf) [Accessed 15 March 2009].

<sup>4</sup> UNICEF ‘Moçambique em perspectiva’. Available at <http://www.unicef.org/mozambique/pt/overview.html> [Accessed 7 June 2009].

<sup>5</sup> M Mouzinho and Débora Nandja ‘A alfabetização em Moçambique: desafios da educação para todos’ background paper prepared for the *Education for all global monitoring report 2006 - literacy for life* (2006) UNESCO. Available at <http://unesdoc.unesco.org/images/0014/001462/146284por.pdf> [Accessed 1 November 2008].

<sup>6</sup> Ibid at 6 [Accessed 15 March 2009].

<sup>7</sup> Resolução n° 16/2005, Aprova o Programa Quinquenal do Governo para 2005- 2009 at 68-70. Available at [http://www.portaldogoverno.gov.mz/docs\\_gov/programa/Plano\\_Quinquenal\\_%20do\\_Gov\\_Moc\\_2005\\_2009.pdf/view](http://www.portaldogoverno.gov.mz/docs_gov/programa/Plano_Quinquenal_%20do_Gov_Moc_2005_2009.pdf/view) [Accessed 7 June 2009].

<sup>8</sup> Ministério da Educação e Cultura *Plano estratégico da educação e cultura 2006-2011* (Junho 2006). Available at <http://www.mec.gov.mz/img/documentos/20060622060602.pdf> [Accessed 7 June 2009].

<sup>9</sup> Lei n° 6/92 de 6 de Maio que aprova o novo Sistema Nacional de Educação

Table 1 below shows the number of schools at each level and corresponding numbers of students enrolled in 2008.

**Table 1: Numbers of schools and enrolment**

Designation	Schools	Students Enrolled
Primary School I Level (1-5 grade)	9 649	3 597.392
Primary School II level (6-7 grade)	2 210	490 031
Secondary School I Level (8- 10 grade)	285	257 729
Secondary School II Level (11- 12 grade)	76	35 450
Technical Schools I level	23	N/A
Technical Schools II level	27	N/A
Technical Schools III level	12	N/A
Public Universities	13	44 000
Private Universities	14	12 000

Source: Ministry of Education and Culture (2008) <sup>10</sup>

As can be seen, primary schools in Mozambique together enrol more than 4 million students. These numbers shrink for higher levels of education. University programmes account for only 56 000 students.

Table 2 below shows enrolment levels for girls in early primary school (Grades 1 to 5), with the percentage of females rising from 42 per cent in 1998 to 47 per cent in 2008.

**Table 2: Enrolments by gender in Grades 1-5, 1998-2008**

Ano Year	Public		Private		Grand Total		% Girls
	Total	Girls	Total	Girls	Total	Girls	
1998	1 876 154	788 049	34 035	15 527	1 910 189	803 576	42.1
1999	2 074 708	886 482	34 081	15 546	2 108 789	902 028	42.8
2000	2 271 265	983 549	37 460	16 868	2 308 725	1 000 417	43.3
2001	2 508 611	1 102 927	47 121	20 866	2 555 732	1 123 793	44.0
2002	2 644 405	1 180 265	60 232	27 522	2 704 637	1 207 787	44.7
2003	2 826 362	1 280 432	57 749	27 401	2 884 111	1 307 833	45,3
2004	3 071 564	1 409 621	71 456	33 931	3 143 020	1 443 552	45.9

<sup>10</sup> Ministry of Education and Culture 'Education statistics' (2008). Available at <http://www.mec.gov.mz/img/documentos/20090224020211.pdf> [Accessed 15 March 2009].

2005	3 393 677	1 572 276	77 463	36 709	3 471 140	1 608 985	46.4
2006	3 597 392	1 682 132	61 026	29 447	3 658 418	1 711 579	46.8
2007	3 866 906	1 815 085	65 585	31 790	3 932 491	1 846 875	47.0
2008	4 109 298	1 938 711	67 668	32 727	4 176 966	1 971 438	47.2
EPI – Primary Education 1st Level (Grades 1-5)							

Source: Ministry of Education and Culture (2008)

## 1.2.1 Education System and Access to Knowledge

Mozambican students face three important challenges with regard to access to learning materials.

### 1.2.1.1 Cost of Learning Materials

Often, learning materials are too expensive for the local students. Indeed, due to the high rates of poverty in Mozambique, the meagre resources of Mozambicans are often devoted to basic needs and survival. This situation is particularly critical in the rural areas.

In order to overcome this difficulty the government has undertaken to produce learning materials through the Ministry of Education and Culture. Learning materials, according to the government, should be free for the seven years of compulsory education in Mozambique.<sup>11</sup> For the remaining years, families have to bear the heavy burden of purchasing books for their children.

The Plan of Action of the Strategic Plan for Education and Culture 2006-2011<sup>12</sup> established as a target the provision of one book per subject for each student by 2011 at primary school level.<sup>13</sup>

At university level, students – apart from a limited number who benefit from government scholarships – have to purchase books from their own resources. The learning materials used as sources at universities are generally produced by foreign authors, mainly from Portugal and Brazil, and are expensive. The university libraries generally possess only one copy of each book, which is meant to be consulted by all lecturers and students. As a consequence, there is a flourishing reprography (photocopying) industry in the university faculties. There are an average of three photocopy machines in each faculty. In Maputo city alone, there are some 136 small reprography companies with four to six photocopy machines each, as duly registered in the Ministry of Industry and Trade.<sup>14</sup>

The photocopied book has proven to be more accessible to students than the original: each page is priced at US\$0,0389 to US\$0,0584. University education is therefore based mainly on photocopied materials.

<sup>11</sup> Compulsory education was established by the Law 4/83 of 23 March 1983, Article 6.

<sup>12</sup> Ministério da Educação e Cultura, *Plano estratégico da educação e cultura 2006–2011* (Junho 2006). Available at <http://www.mec.gov.mz/img/documentos/20060622060602.pdf> [Accessed 7 June 2009].

<sup>13</sup> Ibid at 35 .

<sup>14</sup> Boaventura Afonso ‘Relatório de Moçambique sobre direito de autor e direitos conexos’ (2007) Training Programme on Copyright, Harare 23-27 April.

The reprography industry constitutes an activity legitimately licensed by the competent authorities at the Ministry of Industry and Trade. During the process of licensing, the authorities only take into account the trade activity itself -- without due consideration of the 2001 Copyright Law and (ultimately) the piracy implications of the illegal photocopying of entire copyright-protected books for commercial gain.

### **1.2.1.2 Lack of Public Libraries and Limited Resources in Existing Libraries**

Currently, primary and secondary schools lack internal libraries for their students. There is a lack of resources to establish specialised libraries for children. Universities usually have one library for each faculty, which specialises in the subject matter of that faculty. These libraries are the main resources for university students. However, the catalogue is often outdated and with few books.

The Eduardo Mondlane University (UEM) – the main and oldest university in Mozambique – has undertaken a profound reform of its library system, integrating the different faculty libraries into one Central Library. The Central Library currently stocks more than 180 000 books and publications, and this is largely as a result of donor funds, as the state has not injected any funds for new books in the last 10 years.

### **1.2.1.3 Weak Publishing Industry**

The local publishing industry is extremely weak; fewer than 200 books are published per year, with a typical print run for each book of approximately 1 500 copies, due to the inadequate market for books.

The table below shows the number of books published in Mozambique, and the number of publishing companies, as registered over the period 2000-2006:

**Table 3: Number of registered books and publishing companies in Mozambique, 2000-2006**

<b>Year</b>	<b>Registered Books</b>	<b>Publishing companies registered</b>
2006	223	4
2005	216	2
2004	179	3
2003	176	7
2002	134	4
2001	143	3
2000	125	5

**Source: National Institute for Books and Records - Copyright Office (2006)**

The same trend may be witnessed in the case of other reading materials such as newspapers and magazines. Although Mozambique is characterised by a free press, and has seen a rapid increase in the number of new newspapers and magazines, these numbers still have to be improved in order to develop the publishing industry and to truly begin to spread information and knowledge.

Almost all the magazines and periodicals in existence deal with general information; scientific and specialised periodicals are still to be developed.

**Table 4: Types of publications in 2006**

Type	Quantity
Newspapers	77
Magazines	38
Periodic publications	74
<b>Total</b>	<b>189</b>

Source: National Institute for Books and Records – Copyright Office (2006)

### 1.2.2 Education and Gender

Disparities between men and women remain pronounced in the basic education system in Mozambique. Although 52 per cent of the Mozambican population are females, girls comprise only around 47 per cent of enrolments in the first level of primary school, and fewer than 40 per cent at the second level of primary school. Girls are more likely to repeat grades than boys, and less likely to complete the full basic education cycle. Only about 25 per cent of the teachers in the basic education system are women.

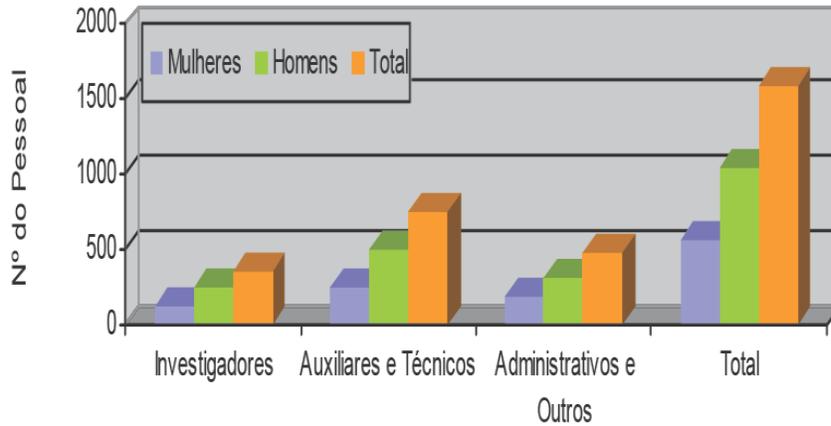
Additionally, girls tend to drop out from school much more than boys and the result is a gender gap, which reaches as much as 35 to 40 percentage points (2000) in Grade 5 in the Northern and Central Regions. The reasons for the disproportionate dropout of girls in these regions are most likely related to: (i) long distances to school and incomplete schools which discourage attendance, especially for girls with family obligations; and (ii) the low number of female teachers who can be role models.

The graphs and the table below<sup>15</sup> show clearly that the number of women ('mulheres') engaged in research is lower than that of the men ('homens'). Specifically, Graph 2 demonstrates that only 34 per cent of Mozambican scientific researchers are women. Long commuting distances and unavailability of research documentation inhibit women's access to knowledge as much time is taken up by domestic responsibilities.

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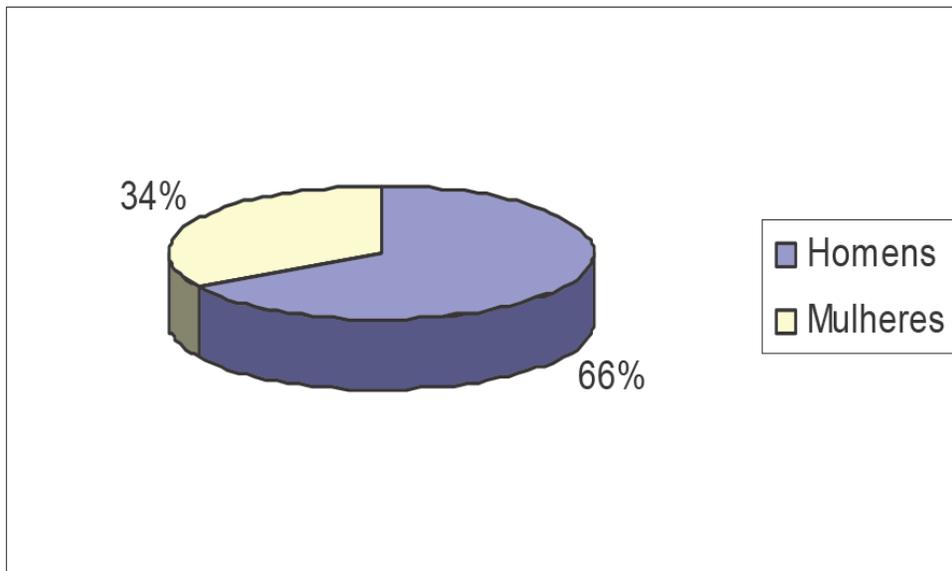
<sup>15</sup> The graphs are available in Ministério da Ciência e Tecnologia *Indicadores de ciência tecnologia e inovação 2008* (2008). Available at [http://www.mct.gov.mz/pls/portal/docs/PAGE/NEWS\\_EVENTS/CONSELHO\\_COORDENADOR/INDICADORE\\_S-08.PDF](http://www.mct.gov.mz/pls/portal/docs/PAGE/NEWS_EVENTS/CONSELHO_COORDENADOR/INDICADORE_S-08.PDF) [Accessed 15 March 2009].

**Graph 1: Distribution of personnel engaged in research by type of activity and gender**



**Source: Ministry of Science and Technology (2008)**

**Graph 2: Percentage of personnel engaged in research by gender**



**Source: Ministry of Science and Technology (2008)**

Table 5 below shows that the research areas where women have a significant presence (though still not as great a presence as men) are agriculture, social and human sciences and natural sciences.

**Table 5: Number of researchers by scientific area and gender**

Área Científica	Investigadores		Total
	Homens	Mulheres	
Ciências naturais	34	22	56
Engenharia & Tecnologia	20	1	21
Medicina	9	6	15
Agricultura	90	51	141
Ciências Sociais & Humanas	67	31	98
Outras	4	2	6
<b>Total</b>	<b>224</b>	<b>113</b>	<b>337</b>

Fonte: MCT, Inquérito 2006.

Nota: Os dados não incluem o Ensino Superior, ONGs e Empresas.

Source: Ministry of Science and Technology (2006)

## 2. Doctrinal Analysis

### 2.1 Statutes and Regulations: Introduction to Legal Framework

The regulation of intellectual property in Mozambique traces its foundation to the time before independence, through two different instruments: the Industrial Property Code<sup>16</sup> and the Law on Copyright and Related Rights.<sup>17</sup> These two instruments were complemented by the 1966 Civil Code which contained some provisions related to intellectual property.<sup>18</sup> However, the establishment of a legal framework was not accompanied by the establishment of robust institutions to implement the law. Indeed, all industrial property was looked after by a small division under the General Directorate of Industry. This division acted like a mailbox to channel applications related to industrial property rights to the National Institute of Industrial Property located in Lisbon (the capital of Mozambique's colonial rulers, Portugal). No copyright office was set up.

When Mozambique gained its independence from Portugal in June 1975, the new FRELIMO government embraced a centrally-planned economy which placed particular importance on collective ownership of property. Private property was discouraged and intellectual property totally lost its relevance in the new context -- although no changes were formally made, as the Copyright Code was not revoked expressly. The Copyright Code in force was simply ignored.

Since its independence Mozambique has enacted three constitutions, in 1975, 1990 and 2004.<sup>19</sup> The first Constitution of Mozambique adopted in 1975, inspired by the ideology of collective ownership, did not include any provision on intellectual property. In 1986, President Machel was killed in a plane crash and succeeded by President Joaquim Chissano. The Chissano government pledged itself to develop a market-oriented economy.<sup>20</sup> In 1990, a new Constitution was enacted, in the context of peace negotiations between FRELIMO and RENAMO in order to shift from a single-party regime to a multiparty democracy. The 1990 Constitution established the transition from a centrally-planned economy to the free market and from the single-party regime to a multiparty democracy, and especially placed the citizen at the heart of the state system.

The new Constitution of 1990 provided expressly for freedom of expression and information (Article 74), the right to education (Article 92) and the private ownership of property.<sup>21</sup> The 1990

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<sup>16</sup> Approved by the Decree n°30.679 of 24 August 1940, which became applicable to Mozambique further to enactment of 'Portaria' n°17043, of 20 February 1959.

<sup>17</sup> Approved by the Decree n°46.980 of 27 April 1966, which became applicable to Mozambique further to enactment of 'Portaria' n° 679/71, of 7 December.

<sup>18</sup> The Civil Code was approved on 25 November 1966 by 'Decreto-Lei' n° 47344 and was extended to Mozambique through 'Portaria' n.º 22869 of 18 December 1967.

<sup>19</sup> Open Society Initiative for Southern Africa, *Mozambique: o sector da justiça e o estado de direito* (2006) OSISA, London, at 4. Available at [www.sarpn.org.za/documents/d0002240/Mozambique\\_Justica\\_Sept2006.pdf](http://www.sarpn.org.za/documents/d0002240/Mozambique_Justica_Sept2006.pdf) [Accessed 22 June 2009].

<sup>20</sup> Answers.com. Available at [www.answers.com/topic/mozambique](http://www.answers.com/topic/mozambique) [Accessed 22 June 2009].

<sup>21</sup> Article 86 of the Constitution of 1990 states: '1. The State shall recognise and guarantee the right to ownership of property'. Available at [http://www.southernafricalawcenter.org/files/tbl\\_s5107SAPublications%5CFileUpload5913%5C12%5CMozambique.pdf](http://www.southernafricalawcenter.org/files/tbl_s5107SAPublications%5CFileUpload5913%5C12%5CMozambique.pdf) [Accessed 22 June 2009].

Constitution also provided expressly for the protection of intellectual property rights, in Article 79.<sup>22</sup>

In November 2004, another Constitution was enacted by Parliament. The new Constitution did not bring substantial changes to the former one; however, it improved and better clarified the changes made by the 1990 Constitution.<sup>23</sup> Furthermore, the new Constitution recognised some new rights, namely: use of electronic data (Article 71), consumer rights (Article 92), and cultural heritage (Article 81). With regard to the provision on intellectual property, the provision was simply shifted from Article 79 to 94, maintaining its content entirely.

Nevertheless, it was not until the implementation of the 1994 WTO TRIPs Agreement that an intellectual property system was put into place in Mozambique.<sup>24</sup>

As a least developed country (LDC), Mozambique was not bound by TRIPs until 2006. Nevertheless, the country undertook concrete steps to comply with TRIPs far ahead of the scheduled deadline. Mozambique did not take advantage of the TRIPs flexibility allowing a delayed implementation of the Agreement until 2006.<sup>25</sup>

In compliance with the TRIPs provision requiring Member States to establish a legal framework for intellectual property, the Mozambican government enacted, in 1999, the Industrial Property Code<sup>26</sup> and, in 2001, the Copyright Law.<sup>27</sup> As stated before, although the previous laws, enacted during the colonial regime, were theoretically still in force, they had largely been ignored.

In further compliance with TRIPs, the Mozambican government created a Department for Industrial Property under the Ministry of Industry and Trade in 1995. The industrial property system was further strengthened through establishment of an autonomous entity responsible for administration of patents and trademarks, the Industrial Property Institute, created in 2003.<sup>28</sup> In May 2000, the collective management society of Mozambique, Sociedade Moçambicana de Autores (SOMAS), was established. The National Institute for Books and Records (Instituto Nacional do Livro e do Disco), established in 1975, which was originally entrusted with press responsibilities, was expanded to include the Copyright Office in 2001.

Concurrently, Mozambique has undertaken to adhere to all relevant international organisations active in the intellectual property system, namely the World Intellectual Property Organisation

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<sup>22</sup> Article 79 states '1. All citizens shall have the right to freedom of scientific, technical, literary and artistic creativity. 2. The State shall protect rights relating to intellectual property, including copyright, and shall promote the practice and dissemination of literature and art.'

<sup>23</sup> Open Society Initiative for Southern Africa *Moçambique: o sector da justiça e o Estado de direito* (2006) at 6.

<sup>24</sup> Mozambican Government approved accession to WTO by the Resolution nr 31/94 of 20 September.

<sup>25</sup> This deadline was further extended to 2013, for all the least developed countries. The Doha Declaration on TRIPs and Access to Medicines of 2001, exempt the least developed countries from TRIPs compliance in relation to patents related to medicines until 2016.

<sup>26</sup> Through the Government Decree nr 18/99 of 4 May 1999. The Code went to a deep reform in 2006: the new Industrial Property Code of Mozambique was enacted on 12 April 2006 by the Government Decree nr 4/2006.

<sup>27</sup> Law 4/2001 of 27 February 2001.

<sup>28</sup> The Industrial Property Office was established by the Government Decree nº 50/03 of 24 December 2003.

(WIPO) (agreed to adhere in 1996<sup>29</sup>) and the African Regional Intellectual Property Organisation (ARIPO) (agreed to adhere in 1999).<sup>30</sup>

The following WIPO-administered instruments have been ratified by Mozambique:

- 1996 – Convention Establishing the World Intellectual Property Organization on 14 July 1967 – Resolution of the Council of Ministers nr 12/96 of 18 June;
- 1997 – Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886<sup>31</sup> – Resolution of the Council of Ministers nr 13/97 of 13 June;
- 1997 – Paris Convention for the Protection of Industrial Property of 20 March 1883 – Resolution of the Council of Ministers nr 21/97 of 12 August;
- 1997 – Madrid Agreement Concerning the International Registration of Marks 14 April 1891 – Resolution of the Council of Ministers nr 20/97 of 12 August;
- 1997 – Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks of 27 June 1989 – Resolution of the Council of Ministers nr 20/97 of 12 August;
- 1999 – Patent Cooperation Treaty of 19 June 1970 – Resolution of the Council of Ministers nr 35/99 of 16 November;
- 2001 – Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957 – Resolution of the Council of Ministers nr 31/2001 of 12 June;

Mozambique has also ratified the Harare Protocol on Patents and Industrial Designs, adopted in Harare on 10 December 1982 by the Member States of ARIPO.

However, the legal framework for protection of copyright in Mozambique (currently provided by the 2001 Copyright Law) has not yet been augmented by detailed regulation, and most of the rights are thus lacking clear and concrete implementation guidelines. This lack of regulation undermines the feasibility of the legal flexibilities provided for by the law.

## **2.1.1 International Obligations**

### **2.1.1.1 WTO TRIPs Agreement**

In 1994 Mozambique signed the Marrakech Agreement, thus joining the World Trade Organisation<sup>32</sup> and through the ‘single undertaking’ mechanism automatically ratified the Annex containing the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).<sup>33</sup>

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<sup>29</sup> Ratified by the Government Resolution n° 12/96 of 18 June 1996.

<sup>30</sup> Resolution of the Council of Ministers nr 34/99 of 16 November 1999.

<sup>31</sup> A Resolution approving the adherence of Mozambique to this instrument was issued by the government although the instrument was not deposited at the WIPO.

<sup>32</sup> Through Resolution nr 31/94 of 20 September of the Council of Ministers.

<sup>33</sup> ‘O enquadramento da OMC funciona na base do single undertaking, relativamente aos resultados da Ronda de Uruguai, isto é, ser membro da OMC implica aceitar todos os resultados da Ronda sem exceção, mesmo os

The TRIPs Agreement sets the minimum standards for the protection of intellectual property rights. The minimum standards comprise:

- Establishment of a legal framework for the protection of intellectual property rights;
- The administration and enforcement of intellectual property rights through the establishment of intellectual property offices, judicial institutions and border measures against intellectual property rights infringement; and
- Definition of the minimum term of protection of intellectual property rights.

The TRIPs Agreement took into consideration existing discrepancies and asymmetries in terms of the development of WTO Member States, and the difficulties that could derive from the uniform enforcement of provisions contained in TRIPs. Certain flexibilities were defined to cater to these asymmetries:

- Time-based flexibilities – phased implementation according to whether the country classified itself as developing or least developed; and
- Substantive flexibilities – for example, compulsory licenses, parallel importation, exceptions and limitations.

For the 32 least developed countries (LDCs) belonging to the WTO, including Mozambique, the time-based flexibilities originally provided considerable lead-time to allow these countries to create basic technological and economic enabling conditions for enforcement of an intellectual property regime. The TRIPs compliance deadline for LDCs was initially the beginning of 2006, and was subsequently extended until 2013 with respect to intellectual property rights in general, and until 2016 with respect to patents related to medicines. As an LDC, Mozambique thus could have benefited from the extension of time until 2013 in the case of intellectual property rights in general, and until 2016 in the case of pharmaceutical patents. However, Mozambique did not take advantage of these TRIPs flexibilities allowing delaying implementation.

The one TRIPs flexibility Mozambique did make use of in the broad industrial property area was the one related to compulsory licences. In 2004, addressing the country's critical situation with HIV/AIDS, the government issued a compulsory licence on a combination of the anti-retroviral drugs stavudine, lamivudine and nevirapine.<sup>34</sup>

In the copyright area, the Mozambican Copyright Law of 2001 served to implement several TRIPs principles, including:

- Protection of the expression of ideas;
- Copyright term of protection of 70 years beyond the author's life (even though the TRIPs minimum is life plus 50 years);
- Protection of computer programmes; and
- Protection of performers, phonogram producers and broadcasting organisations.

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Acordos plurilaterais, embora estes não se apliquem fora dos territórios dos seus subscritores', S Namburete *A organização mundial do comércio – uma visão Africana* (2005) Almedina, Coimbra at 19.

<sup>34</sup> Decision of the Deputy Minister of Industry and Trade issued on 5 April 2004 (Licença Compulsiva nº 01/MIC/04).

Mozambique did not take full advantage of the TRIPs flexibility related to the term of copyright protection for authors' moral and economic rights, for broadcasts and for works of applied art. For all these works, the term of protection specified in Mozambique's 2001 Copyright Law goes beyond the minimum term of protection imposed by TRIPs – without any apparent justification for the extended term. Adoption of minimum standards on the term of protection (eg, life plus 50 years instead of life plus 70 years for authors' works) would have allowed for the works to fall into the public domain more quickly, thus facilitating greater access to knowledge. (There is more on the Mozambique Copyright Law of 2001 below.)

### **2.1.1.2 The Berne Convention**

Further to incorporation of an intellectual property provision in the 1990 Constitution and adherence to the World Trade Organisation in 1994, Mozambique expressed in 1997 its willingness to adhere to the Berne Convention of 9 September 1886, by enacting the Resolution of the Council of Ministers number 13/97 of 13 June 1997. Notwithstanding that Resolution, the instrument of ratification was not deposited at WIPO. There are official statements from the government to the effect that the Berne Convention is in force in Mozambique. The failure to deposit the instrument of ratification at WIPO seems to be a mere bureaucratic omission that could be easily solved.

In 2001, four years after the enactment of the Resolution to adhere to the Berne Convention, Parliament passed the Copyright Law of 2001. Although Mozambique did not adhere formally to the Berne Convention, it complied fully with its principles, by virtue of adhering to the TRIPs provisions.<sup>35</sup> Mozambique did not incorporate the Berne Appendix, which allows for compulsory licensing of translations under certain circumstances, and there is no official position on the matter; to some extent, this could be because the indigenous language publishing is still nascent in Mozambique and the market is dominated by the Portuguese-language publishing industry – which would not benefit from the Berne Appendix as Portuguese is a European language and thus not covered by the Appendix.

### **2.1.1.3 WIPO Copyright Treaty (WCT) and Performances and Phonograms Treaty (WPPT)**

Mozambique did not sign either of these so-called 'WIPO Internet Treaties'. Accordingly, digital issues are not specifically addressed to any great extent by Mozambican copyright laws and regulations. In particular, there are no specific provisions in the Mozambican law prohibiting circumvention of technological protection measures (TPMs).

## **2.1.2 National Statutes, Strategies and Policies**

### **2.1.2.1 The Constitution**

As stated before, the Mozambican Constitution of 2004 provides, in Article 94, an express statement regarding intellectual property. This Article focuses on copyright as an instrument for

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<sup>35</sup> Article 9(1) of TRIPs states: 'Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto.'

promotion and dissemination of knowledge and arts,<sup>36</sup> refering to ‘intellectual property, including copyright,’ thus aiming to ensure copyright is clearly incorporated.

The Constitution also provides, in Article 88, for the right to education for all citizens. Access to knowledge is undoubtedly one way to achieve this provision of the right to education to all citizens.

#### **2.1.2.2 The Civil Code<sup>37</sup>**

The Civil Code contains some provisions with regard to copyright:

- Article 48 – establishes the principle of territoriality of copyright law; and
- Article 1303 – states that copyright will be regulated by a special law. It was under this premise that the Portuguese Copyright Code was enacted in 1966.<sup>38</sup>

#### **2.1.2.3 The Penal Code**

The Penal Code enacted in the colonial period is still valid in Mozambique. It contains two relevant provisions regarding copyright, namely: Article 457 dealing with counterfeiting, and Article 462 addressing illegal performance of music.

#### **2.1.2.4 The Copyright Law**

As mentioned above, the independence of Mozambique in 1975 did not provide important changes in the copyright regime. Indeed, due to the centrally planned orientation of the economy after independence, private property in general was neglected and copyright was not a priority for the government. Although the Copyright Code was not revoked expressly, its existence was basically ignored.

The updated Copyright Law enacted in 2001 revoked the old Code. The new Copyright Law is a complex law, incorporating 79 articles and an Annex with 32 definitions.

#### **2.1.2.5 National Intellectual Property Strategy**

In 2007, the Mozambican Government approved the National Intellectual Property Strategy and its Action Plan.<sup>39</sup> The approval was achieved through an inclusive process of consultations between the public and private sectors, academic institutions, rights-holders and civil society. Therefore, the Intellectual Property Strategy represents the vision of all those stakeholders and an adequate intellectual property regime that may serve the national interests in terms of economic, social, technological, scientific and cultural development of the country.

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<sup>36</sup> Article 94 nr 2 states: ‘The State shall protect rights relating to intellectual property, including copyright, and shall promote the practice and dissemination of literature and art.’

<sup>37</sup> ‘Código Civil’ aprovado pelo Decreto-Lei n° 47344 de 25 de Novembro de 1966.

<sup>38</sup> ‘Código de Direitos de Autor e os Direitos Conexos’ approved by Decree n° 46980 of 27 Abril 1966, applicable to Mozambique through Portaria n° 679/71 of 7 December 1971.

<sup>39</sup> Conselho de Ministros *Estratégia nacional da propriedade intelectual* (2009) Maputo.

But the context in which the Strategy was drafted was characterised by concern for protection of the rights of the creator and concern with capturing value from local products. The Strategy therefore does not provide measures to safeguard access to knowledge by users.

#### **2.1.2.6 Eduardo Mondlane University Research Policy**

The Eduardo Mondlane University adopted in June 2007 a Research Policy<sup>40</sup> which establishes that research activities are governed by internationally accepted ethical principles, which demand respect for intellectual property and the legislation in force in Mozambique concerning intellectual property and authorship rights. The Policy sets out norms related to the ownership of the research results carried out at the university, and encourages intellectual property rights acquisitions and protection by the internal competent bodies.

The Policy is clear in terms of the need to protect intellectual property. However, it lacks detail with regard to ownership of copyright and benefit-sharing for the results of the research. The document also lacks provisions that safeguard access to knowledge by researchers and students. The document simply sets out an orientation perspective but does not contain detailed provisions on the management of intellectual property. The Eduardo Mondlane University will soon enact a specific IP Policy in which such issues will be tackled.

### **2.1.3 Flexibilities in the Mozambican Copyright Law**

#### **2.1.3.1 Kinds of Copyright-Protected Works**

The copyright system provides rights-holders with a temporary monopoly for the economic exploitation of their works for a limited period of time. The monopoly allows the creators or owners to benefit from the economic exploitation of creations through selling or lending.

Article 4 of the Copyright Law establishes the kinds of works that are copyright-protected, namely:

- (a) written works, including computer programs;
- (b) lectures, addresses, sermons and other works consisting of words and expressed orally;
- (c) musical works, with or without accompanying words;
- (d) dramatic and dramatico-musical works;
- (e) choreographic and mimed works;
- (f) audiovisual works;
- (g) works of fine art, including drawings, paintings, sculptures, engravings and lithographs;
- (h) works of architecture;
- (i) photographic works;
- (j) works of applied art;
- (k) illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science;

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<sup>40</sup> Eduardo Mondlane University *Eduardo Mondlane University research policy* (2007) University Press, Maputo.

- (1) expressions of folklore.
- (2) It shall also apply to derived works that by reason of the selection or arrangement of their subject matter constitute intellectual creations, namely:
  - (a) compilations of works;
  - (b) translations, adaptations, arrangements and other transformations of original works.

The Copyright Law provides also for the protection of related rights in Article 41(1), namely rights to performances, phonograms, videograms and broadcast programmes.

### **2.1.3.2 Scope**

In Articles 7 and 8, the Mozambican Copyright Law provides for economic and moral rights. According to Article 7, the economic rights comprise reproduction, translation, preparation of adaptations, arrangements and other transformations, making copies of the work available for sale to the public, or any other form of transfer of ownership, for rental and for public lending, presentation or performance of the work in public, import or export of copies of the work, communication to the public for broadcasting by cable or by any other means.

Article 8 lists the following as moral rights:

- (a) the right to claim authorship of his work, in particular the right to ensure that, as far as possible, his name is mentioned in the usual way on copies of the work in relation to every public use of his or her work;
- (b) the right to remain anonymous or to use a pseudonym;
- (c) the right to object to any distortion, mutilation or other modification of his work, or any derogatory action, that might be prejudicial to his honor, or reputation, or to the authenticity or integrity of the work.

### **2.1.3.3 Term of Protection**

Both the WIPO Berne Convention and the WTO TRIPs Agreement set the minimum period of protection of copyright (economic rights) at 50 years after the life of the author in the case of most works. In Mozambique, according to Article 22 of the 2001 Copyright Law, protection of copyright lasts for 70 years from the death of the author. (This is what is known as a 'TRIPs-Plus' provision as it goes beyond the minimum terms prescribed by TRIPs.) The Berne Convention and the TRIPs Agreement also define the minimum period of protection for moral rights as at least the term of economic rights. Mozambique, however, provides eternal protection for moral rights.

The table below compares the terms of protection of the different rights in the Mozambican Copyright Law with the minimum standards set by the TRIPs Agreement, the Berne Convention and the WIPO Performances and Phonograms Treaty (WPPT) of 1996 (though it must be remembered that Mozambique is not a signatory to the WPPT).

**Table 6: Comparison of terms of protection**

<b>Right</b>	<b>TRIPs (Years) *</b>	<b>Berne Convention (Years) *</b>	<b>WPPT (Years) *</b>	<b>Mozambique Copyright Law (Years) *</b>
Moral Rights	N/A	50	N/A	Unlimited
Economic Rights	50	50	N/A	70
Cinematographic Work	N/A	50	N/A	N/A
Photographic Work	N/A	25	N/A	N/A
Applied Art	N/A	25	N/A	70
Performances	50	N/A	50	50
Phonograms	50	N/A	50	50
Broadcast	20	N/A	20	25
Anonymous/Pseudonymous Work	N/A	50	N/A	N/A
Folklore	N/A	N/A	N/A	Unlimited

(\*) After lifetime of the author

Article 7.6 of the Berne Convention provides that the countries of the union may grant terms of protection in excess of those provided by the Convention, and the Mozambican Copyright Law of 2001 has made use of this allowance in the case of moral and economic rights, broadcasts, and works of applied art. But no specific reasons have been offered for these extended terms. Mozambique could have applied the minimum standards in terms of duration of rights in order to allow works to fall in the public domain, thus facilitating public domain access in a shorter period of time.

#### **2.1.3.4 Limitations and Exceptions**

The Berne Convention and TRIPs<sup>41</sup> also include several provisions related to exceptions and limitations, but leave application of these provisions to the discretion of each country. However, the discretion is narrowed by the fact that detailed conditions are defined for limitations and exceptions.<sup>42</sup>

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<sup>41</sup> TRIPs Article 13 ‘Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.’

<sup>42</sup> Kenneth Crews *Study on copyright limitations and exceptions for libraries and archives* (2008) Standing Committee on Copyright and Related Rights Geneva, XVII Session, Geneva November 3-7 2008 (WIPO Docs. SCCR/17/2). Available at [www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=109192](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192) [Accessed 15 November 2008].

Those conditions largely consist of the so-called ‘three-step test,’<sup>43</sup> which prescribes that:

- the exception or limitation is set under certain special cases;
- there is no conflict with normal exploitation of the work; and
- the exception or limitation cannot unreasonably prejudice the author’s interests.

There are three categories of exceptions and limitations:<sup>44</sup>

- Those that safeguard fundamental user rights concerning the individual. Example: the reproduction of public speeches, the right to make quotations, reporting current events, parody, and reproduction for private non-commercial use;
- Those concerning commercial interest, industry practice and competition. Examples: press reviews, ephemeral recordings by broadcasting organisations, museum catalogues, and de-compilation/reverse engineering of computer programmes for interoperability;
- Those concerning society at large and aimed towards the promotion and dissemination of knowledge and information. Examples: provisions for libraries, educators for teaching and research, people with disabilities, reporting of parliamentary and judicial proceedings, and religious celebrations.

Mozambique has followed, through the 2001 Copyright Law, the exceptions and limitations established by the Berne Convention.<sup>45</sup> The Copyright Law provides for exceptions and limitations to copyright in Articles 9 to 21, and for the related rights in Articles 47 to 49.

#### **a. Reproduction for private purposes (Article 9)**

The monopoly that vests in the author does not encompass prohibition of private use of the work.<sup>46</sup> Private use excludes any economic exploitation of the work. The Mozambican Copyright Law allows reproduction of a ‘published work exclusively for the user’s private purposes without authorisation by the author or payment of remuneration.’

#### **b. Reproduction in the form of quotation (Article 10)**

Quotation of a legitimately published work in another work is allowed without authorisation by the author or payment of remuneration, subject to ‘the condition that the source is mentioned, and also the author’s name if it appears in the source.’ However, the quotation has to conform

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<sup>43</sup> See Nwauche (2008) at 8: ‘This test found in international intellectual property treaties such as the Berne Convention for the Protection of Literary Works; the Trade Related Aspects of Intellectual property Rights (TRIPS) of the WTO; to mention a few requires that limitations of or exceptions to rights granted to copyright owners must be in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. The cumulative nature of this test ensures that exceptions and limitations and therefore the public interest are severely threatened. It is difficult to imagine which exception and limitation that does not for example impact on the income of an author. If the three step test is pursued to its logical conclusion, copyright will become an exclusive protection for authors.’

<sup>44</sup> Teresa Hackett ‘Exceptions and limitations’ in *Copyright vital for South countries* SUNS #6581, 3 November 2008.

<sup>45</sup> As indicated before, although Mozambique did not adhere formally to the Berne Convention, its 2001 Copyright Law fully follows its principles. This may derive from the fact that Mozambique as member of the WTO is bound by Article 9 of TRIPs, which establishes that Members shall comply with the Berne Convention in regard to copyright.

<sup>46</sup> José de Oliveira Ascensão *Direito civil – direito de autor e direitos conexos* (1992) Coimbra Editora, Coimbra, at 200.

itself to the ‘normal custom and practice’ and its extent must not ‘exceed what is necessary to achieve its purpose.’ But what is a ‘normal custom’ is not indicated; no specific regulations were enacted to clarify the issue. There is a need for regulations in support of the Copyright Law, clarifying the legislation. In the academic environment there is a belief that normal use probably corresponds to academic practices which limit quotations to the minimum necessary to clarify or highlight a given piece of content. During the interviews conducted for this research, some of the academics indicated that they were not aware of the amount of a work that can be copied.<sup>47</sup>

### **c. Reproduction for educational purposes (Article 11)**

Article 11 is the most important and direct exception related to access to learning materials, and it states that:

It is permitted, without authorisation by the author or payment of remuneration, but without prejudice to the obligation to mention the source and the author’s name if it appears in the source: ...b) to reproduce by reprographic means for educational purposes or for examinations within educational establishments whose activities are not directly or indirectly profit-making and to the extent justified by the aim to be achieved, isolated articles lawfully published in a newspaper or magazine or short extracts from a lawfully published work or short work, provided that such use conforms to normal custom and practice.

The exception allows reprography<sup>48</sup> of isolated articles and brief excerpts of a work. However, the Copyright Law does not specify how short the work or the extract shall be in order to pass as an exception. Regulations must be generated to indicate precisely the amount that can be reproduced without authorisation. Some of the academics interviewed indicated, informally, that 10 per cent of a work would seem to be a fair amount of reproduction.

### **d. Reprographic reproduction for libraries and archive services (Article 12)**

This exception for libraries and archive services in Article 12 allows reproduction of part of or entire works (according to the specific case) through reprography if the activities of the institutions ‘are not directly or indirectly profit-making.’ It can be deduced from the provision that entire works may be reproduced by those institutions but only in isolated cases, meaning that the library may not put the work at the disposal of everybody for free reproduction and at any time they want. In addition, Article 12(2) (b) clarifies that ‘if repeated, [that reproduction] occurs on separate, unrelated occasions’, meaning that multiple copies cannot be made on a single occasion.

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<sup>47</sup> One of the lecturers interviewed at the Eduardo Mondlane University stated: ‘I am aware that the copyright is not unlimited and partial use is possible....’ On the other hand, one of the students said: ‘I am not aware (of the free use) but I am aware that it is possible to reproduce some materials for educational purposes. I am convinced that the reproduction for educational purposes causes less damage than other uses. I am aware of the fact that partial use of the work is possible....’

<sup>48</sup> Definition 32 set out in the Annex of the law states that: ‘Reprographic reproduction of a work’ means the production of facsimile copies of originals or of copies of the work by means other than painting. The production of reduced or enlarged facsimile copies is also considered ‘reprographic reproduction.’

Reproduction of an entire work is possible, according to Article 12(3), when such a copy is intended to preserve,<sup>49</sup> or if necessary replace,<sup>50</sup> a work in the permanent collection of a library or archive service, on account of the latter having been lost, destroyed or rendered unusable, as long as the work is not available in reasonable condition or the reproduction is an isolated act or, if repeated, it occurs on separate, unrelated occasions.

Partial reproduction may be allowed to the library/archive where the purpose of the reproduction is to respond to a request from a natural person and the library or archive service ensures that:

- the copy will be solely used for research purposes;
- the reproduction is occasional; and
- a collective licence may not be obtained.

Commercial libraries do not qualify for the exception, but the Mozambican context does not offer any example of a commercial library. Indeed, the majority of the libraries are public libraries or connected to a university. Some financial institutions also provide documentation centres that collect important pieces of knowledge, but they generally allow free access. Some diplomatic missions provide cultural centres, including libraries accessible to the public.<sup>51</sup>

The Law also allows non-commercial libraries/archives to lend a copy of a written work to the public solely for consultation, without authorisation by the author or payment of any remuneration.

#### **e. Visually-impaired people**

More than 700 000 people are affected by visual problems in Mozambique. Among them 200 000 are blind, but only around 500 are able to read in Braille and only three hold university degrees.<sup>52</sup>

The Mozambican Copyright Law is silent regarding exceptions for the benefit of people with disabilities, meaning that any use or adaptation of a work to allow access by disabled people has no protection in the law and therefore needs permission from the author.

A study presented at the Fifteenth Session of the Standing Committee on Copyright and Related Rights (SCCR) of WIPO in 2006 gave evidence that in some countries, the lack of specific exceptions to copyright for the benefit of visually-impaired people is not seen as a problem as there is very little understanding of the restrictions that might arise because of copyright

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<sup>49</sup> ‘Preservation generally involves the making of a copy of a work before it has been lost for any reason, in order to ensure its continued availability’, in Crews ‘Study on copyright limitations and exceptions for libraries and archives’ at 51.

<sup>50</sup> ‘Replacement involves the making of a copy specifically to replace an item that already has been lost from the library collection, or the original is for other reasons no longer suited for general use’, *ibid* at 51.

<sup>51</sup> UK provides for the British Council Library. The US, Portugal, Brazil also provide some important libraries.

<sup>52</sup> Lusa – Agência de Notícias de Portugal, ‘Governo Moçambicano lança edição da Constituição em braille’ (14/08/2008) Interview with Mr José Tole, President of the Mozambican Association of blind people. Available at [www.agencialusa.com.br/index.php?iden=18318](http://www.agencialusa.com.br/index.php?iden=18318). [Accessed 2 July 2009].

protection, and often also very little recognition of the needs of visually-impaired people.<sup>53</sup> A case study looking specifically at Mozambique concluded that:

Libraries in general are very few in Mozambique and there are no libraries at all for visually impaired people. Some material does exist in Braille, but it is unlikely to have a local source. The beginning of a greater recognition of the needs of visually impaired people is, however, emerging. For example, in June 2006 a currency with a change in the face value was launched and it is possible to find information about this in Braille.<sup>54</sup>

At this point in time there is, therefore, no particular concern in Mozambique about any problems due to copyright with the production and dissemination of accessible formats of copyright works for visually impaired people. At some point in the future as recognition of the needs of those with a visual impairment continues to grow it does, however, seem very likely that copyright will become a problem.<sup>55</sup>

Most recently, in August 2008, the Head of State of Mozambique, Armando Guebuza, launched the Braille version of the Mozambican Constitution. As the adaptation was made by the Ministry of Women and Social Activities and the content was a legal document in the public domain, no copyright issues were raised. This research was not able to identify any cases of Braille adaptation of Mozambican documents protected by copyright.

#### **f. Digital works (Articles 4 and 16)**

The Mozambican Copyright Law deals in only a minor way, with digital issues, making express reference to computer programmes in Article 4(1)(a).<sup>56</sup> And Article 16 allows ‘the legitimate owner of a copy of a computer program’ to ‘make a copy or adaptation of that program,’ without authorisation by the author or payment of separate remuneration, as long as the copy or adaptation is: ‘(a) necessary for the use of the computer programme according to the purposes for which it was obtained;’ and ‘(b) necessary for purposes of archiving, and for replacing the lawfully held copy in the event of its being lost, destroyed or rendered unusable.’

Mozambique is not party to the 1996 ‘WIPO Internet Treaties’ (WCT and WPPT) and thus is not obliged to develop provisions with regard to other digital issues.

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<sup>53</sup> Judith Sullivan *Study on copyright limitations and exceptions for the visually impaired* (2006) Fifteenth Session of the Standing Committee on Copyright and Related Rights of WIPO (SCCR/15/7) September 11 to 13 2006, Geneva. Available at [www.wipo.int](http://www.wipo.int) [Accessed 15 March 2009].

<sup>54</sup> Lusa – Agência de Notícias de Portugal 2008 Interview with Mr José Tole, op cit.

<sup>55</sup> Sullivan op cit at 66.

<sup>56</sup> Article 4(1) states: ‘This Law shall apply in particular to literary, artistic and scientific works that are original intellectual creations in the literary, artistic and scientific fields, namely: (a) written works, including computer programs; ...’

Although the issue was not expressly stated in the 2001 Copyright Law, it may be inferred that the provisions in relation to reproduction, adaptation or performance may be applied both to physical and online works. Once again, clear regulation of the issue is desirable.

**g. Judicial and administrative proceedings (Article 13)**

The Copyright Law allows reproduction of a work for judicial or administrative proceedings without authorisation by the author or payment.

**h. Reproduction for information purposes (Article 14)**

To encourage freedom of expression, the Copyright Law allows reproduction of ‘an article on economics, politics or religion published in newspapers or periodical reviews, or a broadcast work of similar character,’ without authorisation by the author or payment of any remuneration, but subject to the obligation to mention the source and the author’s name if it appears in the source.

An exception related to reporting current events means it is possible to reproduce or make available to the public ‘by means of photography, cinematography or video, or by broadcasting or communication by cable to the public,...work seen or heard during the said event;...’ according to Article 14(b). Article 14(c) provides for an exception whereby ‘speeches, lectures, addresses, sermons and other similar works delivered in public, as well as speeches made during legal proceedings,’ may also be reproduced in the press, broadcast, or communicated to the public ‘for the purposes of news reporting...’

The Copyright Law does not provide expressly for the amount of a work that a user can use for information purposes. It is supposed that that specification should be incorporated in the regulations of the Law, which still have not been enacted.

**i. Related rights (Article 47)**

An important provision for use of limitations and exceptions is set out in Article 47, which sets out conditions for ‘free use’ of performances, phonograms, videograms and broadcasts without authorisation of the rights-holders, namely the performers, producers of phonograms and broadcasting organisations.

Article 47 covers:

- (a) private use;
- (b) the reporting of current events, provided that only short extracts from a performance, phonogram or broadcast programme are used;
- (c) use intended exclusively for education and scientific research;
- (d) quotations, in the form of short extracts, from a performance, a phonogram or a broadcast programme, provided that such quotations conform to custom and practice and are justified by their informatory purpose;
- (e) any other uses that by virtue of this Law constitute exceptions in relation to works protected by copyright.

#### **j. Government works (Article 5)**

According to Article 5(a), there is no copyright in ‘official texts of a legislative, administrative or judicial nature, or official translations thereof;...’ Those documents fall immediately into the public domain.<sup>57</sup>

There is no express provision in the Copyright Law regarding other government works or works created by employees or officers, or that are government-funded. However, Article 32 of the law provides for the cases of works created under a contract of employment. The Article states that:

‘In the case of a work created by an author...under a labour contract in the context of employment, provision of services or piecework, then the primary owner of the economic and non-economic rights is the author, unless otherwise provided for in the contract, but the economic rights in the work shall be considered transferred to the employer to the extent justified by the normal activities under the contract.’

This provision could also apply in a case where the corporate entity that employs the author is the government, whereby the government would own the economic rights while moral rights would still vest in the author.

#### **k. Expressions of folklore (Articles 31 and 50)**

The Mozambican Copyright Law provides, in Article 31, for ownership of the copyright in works of folklore to be vested in the state, which exercises its rights through the Council of Ministers.<sup>58</sup> The state’s copyright in folklore lasts for an unlimited period of time, according to Article 50. However, the Copyright Law does not provide any detailed regulation, including any eventual remuneration to the state or to communities from which that folklore derives.

The Mozambican Government has established an entity which is responsible for management of cultural heritage, the Instituto de Investigação Sócio-Cultural – ARPAC (Arquivo do Património Cultural), under the Ministry of Education and Culture. Discussions regarding folklore have taken place since 1967, during revision of the Berne Convention. African countries raised the issue, aiming at the protection of their cultural heritage, which has on occasion been exploited by Western countries without any or adequate compensation to the local communities. Western countries objected that folklore falls out of the scope of copyright, for copyright law only recognises individual creations, while folklore refers to the expression of the people’s spirits, of an unidentified and collective source.<sup>59</sup>

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<sup>57</sup> Prints of the official government Gazette may be acquired and used freely. However, only one section related to business companies is accessible digitally, at <http://www.portaldogoverno.gov.mz/Legisla>. The full text of online official Gazettes is only available, against payment, in a private database, at <http://www.atneia.com>.

<sup>58</sup> Article 31 of the Copyright Law establishes: ‘Ownership of the copyright in works of folklore vests in the State, which shall exercise its rights through the Council of Ministers, without prejudice to the rights of those who collect, transcribe, arrange or translate them, provided that the collections, arrangements or translations are original and respect the authenticity of the works.’

<sup>59</sup> Oliveira Ascensão *Direito civil*, op cit at 98.

Protection of folklore extends to performances, as its expression is made through performance and communication to the public. Folklore embodies a huge body of knowledge and its communication to the public represents an important method of access to knowledge and in return, creation of wealth to the local communities.

Incorporation of the protection of folklore constitutes an important innovative approach of the Copyright Law. However, because the incorporation of the provision was not followed by clear regulations, no concrete implementation was made.

## **2.2 Judicial and Administrative Decisions**

Mozambique's legal system is civil-law-based and thus legislation is the primary source of law. Courts base their judgements on legislation and there is no binding precedent as understood in common law systems. Nonetheless, the 2004 Constitution recognises the existence of legal pluralism; in other words, there are other normative systems that intertwine with the formal civil-law-based system.<sup>60</sup>

In practical terms, only two copyright-related cases have come to the attention of the research team, and even with these cases there was no clear indication that allowed their identification in the courts. One case was related to a book by a Mozambican author connected with teaching methodologies that was copied by a local typography company. The case seems to be pending in an unidentified court in Maputo. The second case was related to a South African citizen representing the interests of Pearson Publishers and of the authors Paul D. Leedy and Jeanne Ellis Ormrod regarding the book *Practical research: planning and design*, which had been completely reproduced by a Mozambican citizen. It is not clear if the case was handed to the courts.

Therefore it would appear that there are no copyright cases in the courts, and no precedents as such around copyright and access to knowledge. Also, it seems lawyers usually discourage such cases as the courts usually do not make a decision on cases related to intellectual property.

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<sup>60</sup> Paula Rainha 'Republic of Mozambique – legal system and research' (2008) GlobaLex. Available at [www.nyulawglobal.org/globalex/Mozambique.htm](http://www.nyulawglobal.org/globalex/Mozambique.htm) [Accessed 20 November 2008].

### 3. Qualitative Analysis

#### 3.1 Secondary Literature

There are not a great number of books dealing specifically with the Mozambican legal system. And when the research focus is narrowed to copyright, it becomes difficult to find references.

Three monographs have been written at the graduate level of Eduardo Mondlane University (UEM) by Miguel Chissano, Orlanda Gisela Gonçalves Fernandes de Oliveira Graça and Vânia Francine Sigava de Jesus Xavier, and one at the Polytechnic University in Maputo by Jaime Joel Jaime Guambe. Two of these monographs deal with copyright in general<sup>61</sup> and the others specifically with the collective management system<sup>62</sup> and music reproduction rights.<sup>63</sup> As well, important contributions have been made by Boaventura Afonso, the head of the Copyright Office. His works are unpublished papers presented in different seminars organised in Mozambique and abroad, illustrating the Mozambican copyright system.

Two important studies by foreign authors, both available online, focus specifically on exceptions and limitations in Mozambique. One of those studies was produced by Enyinna Nwauche, whose ‘Open access and the public interest in copyright’ makes express reference to the issue of free use in regard to the Mozambican Copyright Law. The second, by Judith Sullivan, *Study on copyright limitations and exceptions for the visually impaired*, points out the lack of specific exceptions to copyright in Mozambique for the benefit of visually-impaired people.

#### 3.2 Impact Assessment Interviews

Impact assessment interviews were conducted with different stakeholders with regard to experiences on the ground in relation to implementation of the Mozambican Copyright Law. These interviews involved the Copyright Office, the collective management society SOMAS, students, lecturers, distance learning centres, documentation centres of the university, publishers, university and public libraries, and a university press.

The findings of the interviews are summarised below.

##### 3.2.1 Awareness of the Copyright Law

The interviewees from the Copyright Office and collective management society SOMAS were the most sensitised and informed on copyright, that being their daily activity.

The other stakeholders indicated that they had become aware of copyright in recent years mainly through university courses, or from what they had read and heard. In general, all the stakeholders gave evidence of awareness of existence of the subject, albeit to different degrees.

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<sup>61</sup> Miguel SA Chissano *Direito de autor em Moçambique: uma reflexão* (1995) TFC - UEM, Maputo; and Orlanda Gisela Gonçalves Fernandes de Oliveira Graça *Direito do autor e direitos conexos na ordem jurídica* (2002) Moçambicana - TFC - UEM, Maputo.

<sup>62</sup> Vânia Xavier *A gestão colectiva dos direitos de autor* (2005) TFC - UEM, Maputo.

<sup>63</sup> Jaime Joel Jaime Guambe *Protecção dos direitos do autor no ordenamento jurídico Moçambicano: o caso do disco* (2008) TFC – ISPU, Maputo.

### **3.2.2 Impact of Copyright on Professional and Academic Activities**

The institutions dealing daily with copyright, namely the Copyright Office and the collective management society SOMAS, are the ones who understood the impact and importance of copyright in their institutions. Indeed, those institutions depend on the royalties collected from the exploitation of copyright. In particular, the collective management society depends exclusively on those royalties, while the Copyright Office depends partly on public funds but part of the amounts paid for the purchase of each copy of copyrighted works is assigned to the Copyright Office.<sup>64</sup>

The National Library also indicated awareness of the impact of copyright as it receives daily requests to use copyrighted materials. The library indicated that it does not impede copying of the materials but draws attention to the existence of the Copyright Law, which imposes some limitations on copying on the part of users.

Copyright-holders also showed knowledge of the impact of copyright, indicating that this is the source of their income. Some publishers even stated that the voluntary implementation of copyright obligations that requires that the works be reproduced upon authorisation of the authors through licences allowed them to compensate the authors, thus giving incentives for production of works of better quality.

In some cases, especially in academic institutions, the interviewees showed that they understood copyright prohibitions. In particular, the lecturers showed that they were aware that some practices related to access to learning materials and their distribution should be curbed by the existing copyright prohibitions. They showed that they knew that their behaviour constituted a violation but explained that there was no alternative.

### **3.2.3 Type of Learning Materials Used or Produced**

There are clear difficulties in the production of learning materials, and therefore foreign learning materials are adopted, especially in the universities. For the primary and secondary schools, the government, through the Ministry of Education and Culture, produces the materials. In the past the copyright was owned by the state but in recent years, private authors and publishers have become involved, thus owning the corresponding copyright.

In recent years an increasing number of digital materials have been used by students. The digital works are easier to obtain and facilitate access to knowledge. Those materials are cheaper than printed books.

The University Library of University of Eduardo Mondlane is now subscribing to 23 000 digital scientific journals and magazines, spending US\$80 000 each year. Those journals from different universities in the world are now freely accessible to students, researchers and lecturers of the university. The National Library is also preparing to launch a new digital platform to give its users access to some of its collections, including legislation.

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<sup>64</sup> Decreto n° 27/2001 de 11 de Setembro de 2001, aprova o Regulamento de aposição obrigatória do selo nos fonogramas e atribui ao Instituto Nacional do Livro e do Disco a competência de autenticar os fonogramas produzidos no país e os importados, através da aposição de selos.

Distance learning courses recently adopted by UEM will bring in new challenges and will require new and innovative types of materials. There will be a process of digitisation of some printed materials for them to be accessible to the enrolled students. This will be a very challenging issue in terms of copyright in the coming years.

### **3.2.4 Ownership of Copyright Materials**

The majority of the reading materials used at the university are produced by foreign authors. Due to language limitations, there is a preference for the scientific works produced in Portugal and Brazil. One student indicated that almost 95 per cent of his research is based on Portuguese authors.

With regard to monographs or theses produced by the students, the university considers the reproduction rights surrendered to it, as the student proceeds to deposit the work in the Central Library. The university is now drafting an internal regulation concerning the deposit of students' final dissertations. According to the new rules, deposit of the final dissertation in the Central Library will be compulsory and imply surrender of reprography rights.

The Distance Learning Centre of UEM adopts, as reading materials, modules produced by lecturers or researchers of the faculties hired especially for this purpose. The authors are compensated for their works and the copyright in the works transferred to the centre.

### **3.2.5 Obligations and Rights Under the Copyright System**

One librarian interviewed from the UEM Central Library indicated that it is as if the law did not exist at all. The interviewee indicated that although he is aware of the fact that reproduction of a complete work is in almost all cases a violation, he has never prevented people from making copies. But some librarians interviewed said they viewed their obligations as protection of copyright and prevention of prohibited reproduction of works. One of the librarians was also aware that the prohibition on copying an entire work was not absolute and that he was entitled to reproduce some entire works for preservation purposes and for substitution of old works. Academics interviewed seemed to know of the protection of copyright, but they stated that in many cases they have used illegally-copied materials due to high prices and unavailability in the market. Student interviewees did not see any obligation on their side in relation to copyright. The publishers identified their obligation under the Copyright Law as payment of royalties to the authors.

The interviewee from the collective management society SOMAS said that while the activities of SOMAS should encompass all copyright areas, it is only active in the music sector. There are no royalties collected in relation to exploitation of other kind of materials such as books.

### **3.2.6 Copyright as an Obstacle to Access to Knowledge**

The overall conclusion in this regard is that the Mozambican Copyright Law is not the single obstacle to access to knowledge, for five important reasons:

- the Copyright Law is not implemented in Mozambique;
- there is not much production of knowledge in Mozambique;
- reproduction of books through reprography is also expensive for Mozambicans, and thus copyright infringement itself does not come cheap, though it happens;

- reading culture is low, as people are more concerned with basic needs rather than publications; and
- the main obstacles to knowledge are the lack of learning materials and their cost.

The majority of stakeholders indicated that the high price of, and lack of, books are the main obstacles to access to knowledge. Photocopying is not viewed as a violation but as a unique opportunity to access knowledge. One of the students interviewed indicated that when the book is not available he is obliged to obtain a photocopy and thus violate copyright, as there is no other alternative.

The Distance Learning Centre, using materials produced under a contract by local teachers, does not see any influence on the price of the materials. The lecturers are paid to produce the materials and immediately transfer their rights.

On the other hand, publishers connect the cost of the books to copyright. They compensate the authors for the works and keep paying a percentage from the sale of the works, and thus the price of the book includes the copyright cost.

Meanwhile, some learning institution and library interviewees indicated that copyright acts as a limitation on their freedom to provide access to knowledge. Libraries receive some requests for complete reproduction of works, which some librarians restrain themselves from doing due to the Copyright Law.

### **3.2.7 Legal Actions Against Copyright Infringements**

Although many interviewees acknowledged that violations of copyright occur frequently, even in a systematic way, they were unanimous in saying that they had never been threatened or prosecuted for those infringements. As stated earlier, many stakeholders act as if there was an absence of copyright law, and the authorities are also silent in the implementation of the law.

Also as mentioned earlier, the researchers were only able to identify two copyright cases. One seems to be pending in an unidentified court in Maputo, and it is not clear whether the second case was taken to court.

### **3.2.8 Intellectual Property Policies**

It was found that there are seldom intellectual property policies in place at institutions, including at academic and research institutions. However, UEM has adopted a Research Policy<sup>65</sup> which deals with intellectual property issues in paragraphs 4.6 and 4.7. As this recently approved policy lacks regulations, there is still no concrete impact at the university.

Paragraph 4.6 states: ‘Research activities are governed by internationally accepted ethical principles, which demands: ...d) respect of intellectual property’. Paragraph 4.7 (Intellectual Property and Authorship Rights) states: ‘Scientific research activity at UEM shall respect the application of the legislation in force in Mozambique concerning intellectual property and authorship rights.’

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<sup>65</sup> Eduardo Mondlane University *Eduardo Mondlane University research policy* (2007) University Press, Maputo.

UEM protects the research that is carried as follows:

- ii) Innovations resulting from research carried out at UEM are the property of the said institution and that of the researcher(s);
- iii) The protection of intellectual property and authorship rights are subject to signed agreement between the UEM and other partners, as well as international tools that regulate the issue and of which Mozambique is signatory; and
- iv) For the effect of intellectual property protection, innovations shall be registered and patented in the competent bodies by the Scientific Directorate of the UEM.

The National Intellectual Property Strategy suggests that all academic and research institutions should adopt internal intellectual property policies. UEM will soon embark on that initiative, and it is hoped the university will incorporate the A2K vision of intellectual property.<sup>66</sup>

### **3.2.9 Copyright and ICTs**

Publishers indicated that digital works are important. However, ICTs are still in the initial phases and many students have no access to the Internet or a computer.

There is a new practice in the universities, whereby lecturers post some materials on the Web, giving easier access to all students. However, not all the materials posted are self-produced, which may raise issues of violation of copyright.

As mentioned above, the 23 000 digital scientific journals subscribed to by the UEM University Library give free access to its students, researchers and lecturers.

The National Library is now involved in a project of digitisation of legislation which should allow full access to Mozambique's legislation in electronic format.

The National System of Education in Mozambique, established in 1992, includes distance learning as one of the special education systems. The UEM Distance Learning Centre is a pioneer institution in distance learning education in Mozambique (and in Africa) and uses innovative online instruments such as digitised modules, digitised materials, an e-learning platform, online tutoring, CD-ROMs, an online forum, chat, and online conferences, including use of peer-to-peer network applications like Skype. However, the distance learning system will bring in new challenges in terms of protection of copyright in the coming years.

One of the most debated issues during the process of establishing the Centre was the kind of learning materials to be adopted and the mechanism for their production.<sup>67</sup> The initial idea was to adopt the so-called 'Readers,' whereby different materials were compiled and put at the disposal of the students. Issues of copyright could have arisen, as the Centre had not developed a

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<sup>66</sup> Council of Ministers *National intellectual property strategy* (2007) Maputo.

<sup>67</sup> Interview with the head of the UEM Distance Learning Centre.

procedure to request authorisation from each of the authors incorporated in the Readers' materials.

However, the methodology eventually adopted was to hire lecturers who were responsible for the conception of the modules for the university. The authors surrendered the copyright on the work against compensation. Any future adaptation and modification of the work was the responsibility of the Centre without any need for authorisation from the authors.

Any other additional reading materials are scanned from books and put at the disposal of the students. This poses the issue of authorisation from the authors of the scanned works. But the Centre argues that no copyright objections may be raised as the works are scanned only partially, in the allowed proportion. However, as stated before, the Mozambican Copyright Law does not indicate the proportion of works which can be reproduced lawfully.

In December 2000, the Government of Mozambique published its National ICT Policy,<sup>68</sup> which seeks, in part, to achieve national ICT literacy and the development of ICT human resources. Within the frame of ICT policy, the Ministry of Education established the SchoolNet Mozambique programme to promote education through information and communication technologies (ICTs).<sup>69</sup> Through this programme, computers are introduced in some primary and secondary schools, although the numbers are still insignificant in primary schools and junior secondary schools, as may be seen in the table and graph below.

**Table 7: Percentage of schools with IT infrastructure at primary ('primario') and secondary ('secundario') levels**

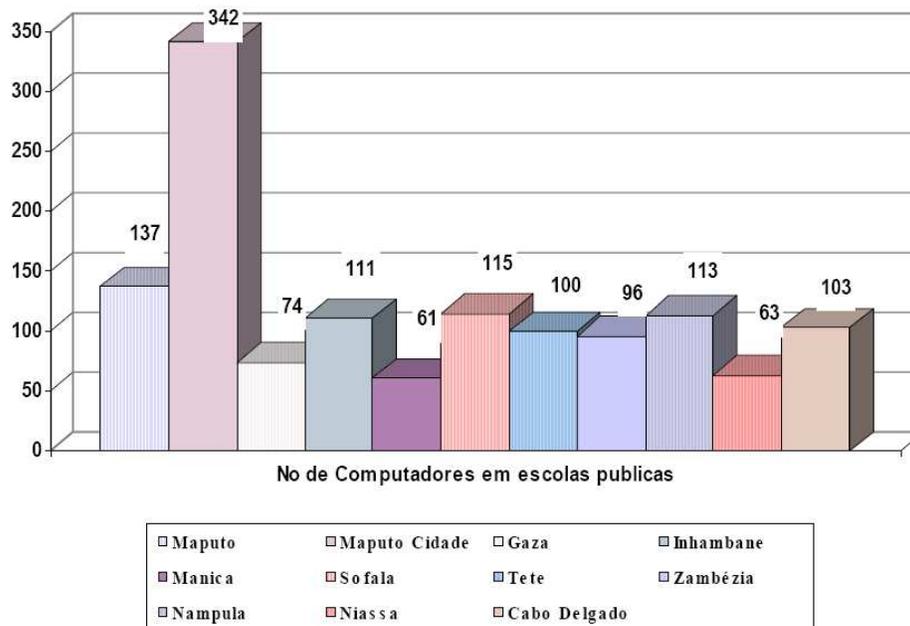
Tipo de Escola	Nº Total de Escolas Publicas	Percentagem de Escolas com Sala de Informática
Ensino Geral Primário 1º Nível	<b>8,700.00</b>	<b>0.02 %</b>
Ensino Geral Primário 2º Nível	<b>1,320.00</b>	<b>1.14 %</b>
Ensino Geral Secundário 1º Ciclo	<b>156.00</b>	<b>9.62 %</b>
Ensino Geral Secundário 2º Ciclo	<b>35.00</b>	<b>91.43 %</b>

Source: Ministry of Education and Culture (2006)

<sup>68</sup> Ministry of Science and Technology *Política de ciência e tecnologia* (2003). Available at [www.mct.gov.mz/pls/portal/docs/PAGE/PORTALCIENCIATECNOLOGIA/PUBLICACOES/POLITC\\_T\\_0.PDF](http://www.mct.gov.mz/pls/portal/docs/PAGE/PORTALCIENCIATECNOLOGIA/PUBLICACOES/POLITC_T_0.PDF) [Accessed 7 June 2009].

<sup>69</sup> Ministry of Education and Culture *Introducing the use of ICTs in education* (2003). Available at [www.mec.gov.mz/img/documentos/brochura.pdf](http://www.mec.gov.mz/img/documentos/brochura.pdf) [Accessed 15 March 2009].

**Graph 3: Number of computers in public schools per region**



Source: Ministry of Education and Culture (2006)

### 3.2.10 Participation in Drafting or Discussing National Copyright Policies

Apart from the public institutions dealing with copyright, the public or private entities from which interviewees were drawn generally have never been consulted in relation to national policies concerning copyright. The Faculty of Law at UEM has on occasion been consulted by the government to give advice on legal instruments, but the faculty has never been consulted on the question of copyright.

Multi-stakeholder involvement in the national processes of drafting policies and legislation is instrumental to generating ownership of the legal framework and its implementation by stakeholders. Thus it is not surprising that some interviewees stated that they work ‘as though there was no law in copyright.’

### 3.2.11 Awareness of Limitations and Exceptions

The interviews revealed that there is understanding that photocopying of copyright-protected works is allowed in some circumstances -- but nobody was able to indicate to what extent photocopying is allowed and which were the provisions of the Copyright Law indicating the limitations. (The reality, of course, is that these limitations are vaguely set out in the law.)

The libraries are aware of the fact that as repositories of knowledge they are allowed to store, and to some extent copy, some materials. The senior employees of the libraries were able to locate the library/archives exception provided for by Article 12 of the Mozambican Copyright Law.

However, the expression ‘exceptions and limitations’ was unknown to all stakeholders interviewed.

### 3.2.12 Actions for Change

The interviews revealed that the government is taking the following valuable steps:

- Approval of some important legal and policy instruments, namely: Intellectual Property National Strategy (August 2007), Copyright Law (February 2001), ‘Lei do mecenato’<sup>70</sup> (September 1994);
- Activities in the field: dissemination activities, book fairs and exhibitions around the country;
- Tax exemptions for import of machinery for (including for the publishing industry);
- Tax exemptions for imported books (‘Lei do mecenato’); and
- Tax exemptions for paper, ink and other materials in the publishing industry.

The interviewees called for additional actions, including:

- Implement the Intellectual Property National Strategy;
- Take advantage of the Appendix of the Berne Convention in order to facilitate translations;
- Raise awareness of copyright issues, including implementation of exceptions and limitations;
- Adopt Copyright Regulations to further provide details on the implementation of the copyright system;
- Adopt internal copyright policies, especially in academic and research institutions;
- Create Intellectual Property Units in relevant institutions, especially academic and research institutions;
- Extend the activities and responsibilities of the collective management society (SOMAS) to the other areas of copyright, especially books, currently neglected by the entity;
- Set mechanisms related to licensed use of copyright works, including licensed reprography and payment of royalties by the reprography companies;
- Create a mechanism to compensate authors through government funds;
- Promote use of digital works;
- Extend tax exemptions available for printed learning materials to digital materials;
- Devote public investment to public libraries for book acquisitions, subscriptions for magazines and journals and other learning materials;
- Devote public investment to purchasing learning materials for poor and vulnerable people; and
- Set mechanisms to allow compulsory deposit of copies of Mozambican works in the public libraries in general and in the National Library in particular.

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<sup>70</sup> This law introduces basic principles that allow individuals, private and public institutions to improve their initiatives in favour of the development of arts, culture, science and social activities in Mozambique.

#### **4. Information and Communication Technology (ICT)-Specific Findings**

The use of ICTs is still in its initial phases in Mozambique. Access to the Internet or to a computer is still a mirage for many students. However, the institutionalisation of distance education, the use of online sources by researchers and students, and publication of research findings, monographs, dissertations and books in digital formats will certainly enhance the use of ICTs.

Both positive impacts in terms of easier access to learning materials, and negative impacts related to copying and illegal dissemination of learning materials, are expected to result.

Mozambique did not sign either of the so-called 'WIPO Internet Treaties'. Therefore, most digital issues are not specifically addressed by the Copyright Law of 2001.

The legal framework must, in the near future, tackle the challenges posed by digital materials.

## **5. Gender-Specific Findings**

Although 52 per cent of the Mozambican population is female, girls and women are still at a disadvantage in terms of education and access to knowledge. Social factors such as domestic obligations, premature marriages and pregnancies, and long distances to schools contribute to low rates of enrolment and high numbers of dropouts.

The low rates of women involved in education can also be found in teaching and research activities. Only 34 per cent of Mozambican scientific researchers are women. Long commuting distances and unavailability of research documentation inhibit women's access to knowledge as much time is taken up by domestic responsibilities.

## 6. Conclusions

### 6.1 Research Hypothesis One

The first of the two ACA2K research hypotheses tested by the ACA2K research team in Mozambique is that:

- The copyright environment in Mozambique does not allow maximal access to learning materials.

Our analysis of the legal framework has confirmed the truth of this hypothesis. The Mozambican copyright legal framework is clearly not one catering to maximal access to learning materials -- because it has adopted international instruments without any deep analysis of the advantages or disadvantages of these systems for the local reality.

The haphazard nature of copyright law-making is demonstrated by the nature of the country's observance of the Berne Convention. The government approved a Resolution for ratification of the Berne instruments, but this Resolution was never deposited with WIPO. And yet the Copyright Law follows the Berne Convention as if it was in force. Another possible example of the weak copyright policymaking environment is the fact that the government did not make use of the allowance by the WTO for delayed implementation of TRIPs provisions. Instead, Mozambique implemented TRIPs provisions on copyright long before the scheduled deadline.

Even more problematic is that the Copyright Law of 2001 in some cases exceeds the minimum terms set out by TRIPs, for instance through the provision of a copyright term of the life the author plus 70 years when the TRIPs minimum for this kind of protection is life plus 50 years. If knowledge access had been its priority, the Government of Mozambique could have applied the minimum standards for terms of protection in order to allow works to fall into the public domain more quickly, thus facilitating greater public domain access to learning materials.

Access to knowledge could also have been facilitated further by a Mozambican Copyright Law that applied a wider and more expansive range of exceptions and limitations and was accompanied by Copyright Regulations making exceptions and limitations easier to operationalise.

Contrary to some other systems (but similar to other civil law jurisdictions), the Mozambican Copyright Law does not incorporate a provision that makes express reference to a general 'fair dealing' provision. This choice does not allow flexibility in the defences that can be relied upon for the use of copyright works. Instead, the Copyright Law defines the exceptions and limitations in great detail. Although the exceptions and limitations aim to be clear, their content in fact lacks clarity, and would require further elaboration (for example, through Copyright Regulations) in order to clearly promote access to knowledge.

In addition, there are some important possible exceptions and limitations – such as those related to disabled people (especially the visually-impaired), exhaustion of rights, parallel imports, and provisions for digital works – which were not included in the Copyright Law at all.

Turning to practical implementation of the law, the views are contradictory. In general, there is a perception that copyright does not hinder access to knowledge because the law is never implemented. The practical reality demonstrates that if the law as it exists were implemented, there should be serious concerns in terms of access to knowledge. On the contrary, people act as if there is no copyright law in Mozambique.

In the meantime, in the absence of enforcement of the access-unfriendly Copyright Law, the main obstacles to access to knowledge in Mozambique are related to scarcity of books and their prices.

## **6.2 Research Hypothesis Two**

The second ACA2K research hypothesis tested by the ACA2K research in Mozambique is that:

- The copyright environment in Mozambique can be changed to maximise effective access to learning materials.

This second hypothesis has certainly been confirmed by the research. The copyright environment in Mozambique could indeed be changed in order to maximise effective access to learning materials.

The starting point is the legal framework. Mozambique must ratify the Berne Convention by proceeding to deposit the instrument of ratification with WIPO. The government approved the Resolution for the instrument in 1997.

The other pressing issues with regard to reform concern limitation of the scope of protection, reduction of the term of protection, and improvement of the exceptions and limitations in order for them to be more practical and operational. Also, Copyright Regulations attached to specific areas of copyright are necessary in order to allow better implementation of the law.

The copyright environment also depends on implementation, interpretations and practices. The Intellectual Property Strategy, approved by the government in 2007, contains important recommendations on the improvement of the intellectual property environment and exploitation of copyright to serve development, namely:

- establishing efficient mechanisms for remunerating authors;
- technical and legal assistance to authors on negotiation, management and commercialisation of IP-related contracts;
- improving the collective management system;
- economic exploitation of folklore;
- establishing anti-piracy measures; and
- developing cultural industries.

Further recommendations on the improvement of the copyright environment include:

- incentives for licensing works;
- action to monitor the sale of potentially infringing materials such as blank CDs, photocopy machines and other infringing machinery;
- improving the mechanisms of compensation of authors through governmental funds;

- incentives to use and circulate digital works; and
- public investment in public libraries for purchasing learning materials.

Finally, with regard to ICTs, the Copyright Law does not recognise the WIPO Internet Treaties (Mozambique has not signed them) and digital issues are not adequately considered in the law. There are only the references made by Article 4(1)(a) that the law applies to computer programmes, and by Article 16 to the right of reproduction of computer programmes. The legal framework needs to follow the pace of the society, the business community and international instruments, and comply with digital principles. In practice, the primary school curriculum is already posted on the Internet, university students are increasingly using digital sources, and the main Mozambican university has introduced a distance learning system, based integrally on innovative ICT instruments. All these developments require an adequate legal framework that efficiently addresses the challenges of the digital environment. However, this framework must be developed with caution, so as not to undermine user access.

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