

Chapter 6

Mozambique

Fernando dos Santos, Julieta Nhane and Filipe Sitoi

6.1 Background

6.1.1 Country history, politics, population and economics

Mozambique is a multicultural society consisting of different ethnic groups who arrived 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. After being under Portuguese colonial rule for 470 years, Mozambique became independent in 1975.

Mozambique is located in Southern Africa with an area of 790 380 km². According to the last census carried out in 2007, the population was 20 530 714.¹ More than 50 per cent of the population was aged 6-24 years and 52 per cent were women.² The principal ethnic groups are, in the north, the Yao, Makonde and Makua; in the centre, the Thonga, Chewa, Nyanja and Sena; and the Shona and Tonga in the south. Small numbers of Swahili people 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 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,³

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

2 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/view [Accessed 7 June 2009].

3 World Bank 'Mozambique at a glance' (2008). Available at http://devdata.worldbank.org/AAG/moz_aag.pdf [Accessed 15 March 2009].

but it remains one of the poorest countries in the world, with a per capita income of about US\$310 per year.⁴ About 70 per cent of the population lives in rural areas. 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 2003.⁵

The national illiteracy rate in Mozambique is 53.6 per cent and the 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 has 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.⁶ The government programme for 2005 to 2009 established the goal of reducing illiteracy rates by 10 per cent in the referred period.⁷ The Strategic Plan for Education and Culture 2006-2011⁸ sets as a target 'provision of primary education school to 97 per cent of the population in 2010'.

6.1.2 Education system

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

- 1) Pre-School System — for children below six years;
- 2) School System — which is divided into:
 - general system: primary and secondary school;
 - technical and professional system;
 - university and equivalent;
- 3) Special System — which consists of:
 - special education for the disabled;
 - vocational education for highly talented people in different areas;
 - adult education;

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

5 M. Mouzinho and D. 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].

6 Ibid at 6.

7 Resolução nº 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 [Accessed 7 June 2009].

8 As translated from the original Portuguese in Plano Estratégico da Educação e Cultura 2006-2011 (Junho 2006) Ministério da Educação e Cultura. Available at <http://www.mec.gov.mz/img/documentos/20060622060602.pdf> [Accessed 7 June 2009].

9 Lei nº 6/92 de 6 de Maio que aprova o novo Sistema Nacional de Educação.

- distance learning;
- training for teachers.

Primary schools in Mozambique together enrol more than 4 million students. These numbers shrink at higher levels of education. University programmes account for only 56 000 students. Enrolment levels for girls in early primary school (Grades 1 to 5) have been rising recently, with the percentage of females rising from 42 per cent in 1998 to 47 per cent in 2008.

Education system and access to knowledge

Mozambican students face three important and interrelated challenges with regard to access to learning materials: expensive learning materials, few and poorly resourced libraries and a weak domestic publishing industry.

Cost of learning materials

Learning materials in Mozambique have the potential to be too expensive for local students. Indeed, due to the high rates of poverty, meagre resources are often devoted to basic needs, particularly in rural areas. In order to overcome this difficulty, the government undertook to produce learning materials through the Ministry of Education and Culture. Learning materials are free for the seven years of compulsory education in Mozambique.¹⁰ The Plan of Action of the Strategic Plan for Education and Culture 2006-2011¹¹ established as a target the provision of one book per subject per student by 2011 at the primary school level.¹² For the remaining years, students have to bear the heavy burden of purchasing books.

At university level, other than a few students who benefit from government scholarships, most must purchase books from their own resources. The learning materials required at universities are expensive because they mainly originate from Portugal and Brazil. The university libraries generally possess one copy only 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 is an average of three photocopy machines in each faculty. In Maputo city alone, there are some 136 small reprography companies with four

10 Article 6 of Lei n° 4/83 de 23 de Março de 1983.

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

12 Ibid at 35.

to six photocopy machines each, as duly registered in the Ministry of Industry and Trade.¹³

Photocopied books have proven to be more accessible to students than the originals. Each photocopied page is priced at US\$0,04 to US\$0,06. University education is therefore based mainly on photocopied materials. The reprography industry constitutes an activity legitimately licensed by the competent authorities of 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.

Lack of public libraries and limited resources in existing libraries

Currently, primary and secondary schools lack internal libraries for their students, due to a lack of resources to establish specialised libraries for those levels. Universities usually have one library for each faculty, which specialises in the subject matter of the faculty. These libraries are the main resources for university students. However, the library collection is often outdated with only a 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, which is largely as a result of donor funds. The state has not provided sufficient funds for new books in the last 10 years.

Weak publishing industry

The local publishing industry is extremely weak. Fewer than 200 books are published per year. These are mostly literary works, not textbooks and a typical print run for each book is approximately 1 500 copies, due to the inadequate market for books. Table 6.1 shows the number of books published in Mozambique and the number of publishing companies registered between 2000 and 2006.

13 B. Afonso *Relatório de Moçambique sobre direito de autor e direitos conexos* (2007) Training Programme on Copyright, Harare 23-27 April.

Table 6.1: Number of registered books and publishing companies in Mozambique, 2000-2006

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

Source: Instituto Nacional do Livro e do Disco

The same trend can 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 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 scarce.

Table 6.2: Types of publications and their number in 2006

Type	Quantity
Newspapers	77
Magazines	38
Periodic publications	74
Total	189

Source: Instituto Nacional do Livro e do Disco

Education and gender

Disparities exist between men and women in the basic education system in Mozambique. Although 52 per cent of the Mozambican population is female, 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 more than boys and the result is a gender gap, particularly in the northern and central regions. 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. There is also the problem of the low number of female teachers who can serve as role models.

The low rates of women involved in education can also be found in research activities. The graphs below¹⁴ show clearly that the number of women ('mulheres') engaged in research is lower than that of men ('homens'). Specifically, Figure 6.2 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 of their time is taken up by domestic responsibilities.

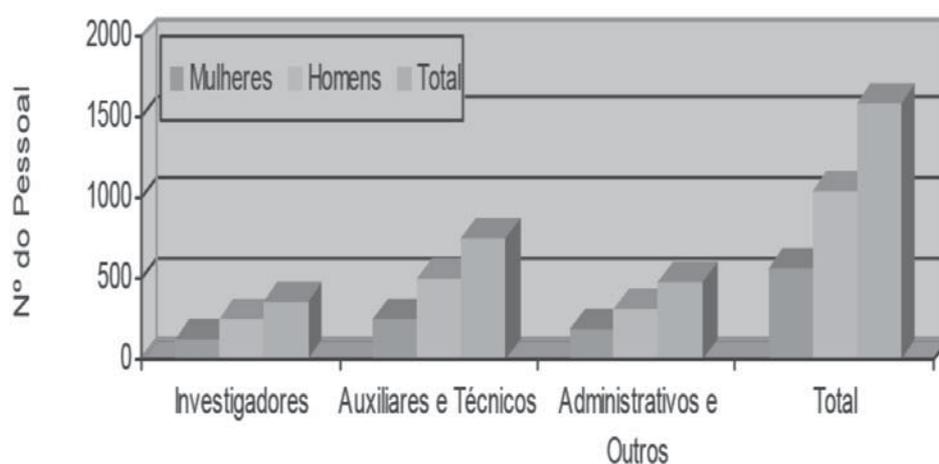


Figure 6.1: Distribution of personnel engaged in research by type of activity and gender

Source: Ministério da Ciência e Tecnologia

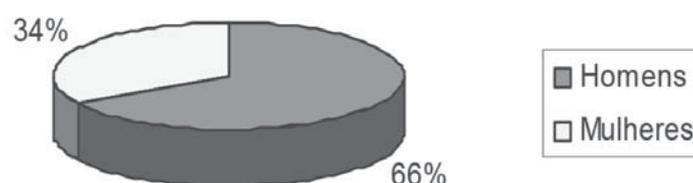


Figure 6.2: Percentage of personnel engaged in research by gender

Source: Ministério da Ciência e Tecnologia

14 Ministério da Ciência e Tecnologia *Indicadores de ciência tecnologia e inovação 2008* (2008). Available at http://www.mct.gov.mz/pls/porta1/docs/PAGE/NEWS_EVENTS/CONSELHO_COORDENADOR/INDICADORES-08.PDF [Accessed 15 March 2009].

6.2 Doctrinal analysis*

6.2.1 Statutes and regulations: introduction to legal framework

The regulation of intellectual property in Mozambique can be traced to the time before independence, through two different instruments: the Industrial Property Code¹⁵ and the Law on Copyright and Related Rights.¹⁶ These two instruments were complemented by the 1966 Civil Code, which also contained some provisions related to intellectual property.¹⁷ However, the establishment of a legal framework was not accompanied by the establishment of robust institutions to implement the law. All industrial property issues were addressed by a small division of the General Directorate of Industry, which merely channelled 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 local copyright office was set up.

When Mozambique gained independence from Portugal in 1975, the 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. Though no formal changes were made and the Copyright Code was not expressly revoked, the law was simply ignored.

Since independence, Mozambique has enacted three constitutions, in 1975, 1990 and 2004. The first, inspired by the ideology of collective ownership, did not include any provision on intellectual property.¹⁸ In 1986, a new government pledged to develop a market-oriented economy,¹⁹ and in 1990 enacted a new Constitution to shift from a single-party regime to a multiparty democracy with the citizen at the heart of the state system. The 1990 Constitution expressly provided for freedom of expression and information (Article 74), the right to education (Article 92) and private ownership of property.²⁰ The 1990 Constitution also expressly

* All quotations from legislative texts in this chapter are translations from the official Portuguese versions.

15 Decreto nº 30.679 de 24 de Agosto de 1940, which became applicable to Mozambique further to enactment of Portaria nº17043 de 20 de Fevereiro de 1959.

16 Decreto nº 46.980 de 27 de Abril de 1966, which became applicable to Mozambique further to enactment of Portaria nº 679/71 de 7 de Dezembro.

17 The Código Civil (Civil Code) was approved on 25 November 1966 by Decreto-Lei nº 47344 and was extended to Mozambique through Portaria nº 22869 de 18 de Dezembro de 1967.

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

19 Answers.com. *Mozambique, history of* (n.d.). Available at <http://www.answers.com/topic/mozambique> [Accessed 22 June 2009].

20 Article 86 of the Constitution of 1990 states: '1. The State shall recognise and guarantee the right to ownership of property.'

provided for the protection of intellectual property rights, in Article 79.²¹ In 2004, another Constitution was enacted and recognised some new rights, namely: use of electronic data (Article 71), consumer rights (Article 92) and cultural heritage (Article 81). The same intellectual property provision was simply re-numbered from Article 79 to 94.

It was not until implementation of the 1994 World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) that an intellectual property system was put in place in Mozambique.²² As a least developed country (LDC), Mozambique was not required to fully comply with TRIPs until a 2006 deadline that was later extended to 2013 or 2016 (depending on the right at issue).²³ Nevertheless, the country undertook concrete steps to comply with TRIPs far ahead of the scheduled deadline, not taking advantage of the TRIPs flexibility allowing delayed implementation.

In compliance with the TRIPs provision requiring member states to establish a legal framework for intellectual property, the Mozambican government enacted the Industrial Property Code in 1999²⁴ and the Copyright Law in 2001.²⁵

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 2003.²⁶ In May 2000, the collective management society of Mozambique, Sociedade Moçambicana de Autores (SOMAS), was established. The Instituto Nacional do Livro e do Disco (National Institute for Books and Records), which was established in 1975 and originally entrusted with press responsibilities, was expanded in 2001 to include the Copyright Office, by virtue of Government Decree 4/91. Concurrently, Mozambique has undertaken to adhere to all relevant international organisations active in the

21 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.'

22 The Mozambican Government approved accession to WTO via Resolution of the Council of Ministers no. 31/94 of 20 September 1994.

23 This deadline was further extended to 2013 for all the least developed countries and the Doha Declaration on TRIPs and Access to Medicines of 2001 exempted least developed countries from TRIPs compliance in relation to pharmaceutical patents until 2016.

24 Through Decreto n° 18/99 de 4 Maio de 1999. The Code was comprehensively reformed in 2006: the new Industrial Property Code of Mozambique was enacted through Decreto n° 4/2006 que aprova o Código da Propriedade Industrial (publicado no BR I Série—n° 15 de 12 de Abril de 2006).

25 Lei n° 4/2001 de 27 de Fevereiro que aprova os Direitos de Autor (publicado no BR I Série—n° 8 de 27 de Fevereiro de 2001).

26 The Instituto da Propriedada Industrial (Industrial Property Institute) was established by Decreto n° 50/03 de 24 de Dezembro de 2003.

intellectual property system, namely the World Intellectual Property Organisation (WIPO) (agreed to adhere in 1996)²⁷ and the African Regional Intellectual Property Organisation (ARIPO) (agreed to adhere in 1999).²⁸

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. Most of the rights are, therefore, lacking clear and concrete implementation guidelines. This lack of regulation limits the utility of the legal flexibilities provided for by the Law.

International Obligations

WTO TRIPs Agreement

In 1994 Mozambique signed the Marrakech Agreement, thus joining the World Trade Organisation²⁹ and through the 'single undertaking' mechanism automatically ratified the Annex containing the WTO TRIPs Agreement.³⁰ 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, in transition or least developed; and
- substantive flexibilities—for example, compulsory licences, 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 create enabling conditions for enforcement of an intellectual property regime.

27 Ratified by Government Resolution no. 12/96 of 18 June 1996.

28 Resolution of the Council of Ministers no. 34/99 of 16 November 1999.

29 Through Resolution of the Council of Ministers of no. 31/94 of 20 September 1994.

30 S. Namburete *A Organização Mundial do Comércio—uma visão Africana* (2005) Almedina, Coimbra at 19.

However, Mozambique did not take advantage of these TRIPs flexibilities allowing delaying implementation.

The Mozambican Copyright Law of 2001 served to implement several TRIPs principles, including:

- protection for 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 programs; and
- protection of performers, phonogram producers and broadcasting organisations.

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.

The Berne Convention

Further to incorporation of an intellectual property provision in the 1990 Constitution and adherence to the World Trade Organisation in 1994, in 1997 Mozambique expressed willingness to adhere to the Berne Convention of 1886 by enacting the Resolution of the Council of Ministers 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, but WIPO is not aware of the fact. 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 has not adhered formally to the Berne Convention, it complied fully with its principles in the Copyright Law, by virtue of adhering to the TRIPs provisions.³¹

Mozambique has not incorporated the Berne Appendix into its copyright framework. The Berne Appendix allows for compulsory licensing of translations under certain circumstances, but there is no official position on this matter. To some extent, this could be because Portuguese-language publishers dominate the Mozambican market and Portuguese is a European language not covered by the Appendix.

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

WIPO Internet treaties

Mozambique did not sign either of the so-called ‘WIPO Internet Treaties’: the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT). Accordingly, digital issues are not specifically addressed to any great extent by the Mozambican Copyright Law. In particular, there are no specific provisions in the Mozambican Law prohibiting circumvention of technological protection measures (TPMs).

National statutes, strategies and policies

The Constitution

As stated before, the Mozambican Constitution of 2004 provides, in Article 94, an express statement regarding intellectual property. This Article focuses on promotion and dissemination of knowledge and arts,³² referring 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 provide this right to education.

The Civil Code³³

The Civil Code contains some provisions with regard to copyright. Article 48 establishes the principle of territoriality of copyright law. Article 1303 states that copyright will be regulated by a special law.

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.

The Copyright Law

The updated Copyright Law enacted in 2001 revoked the old Copyright Code, which had been unenforced, but not repealed, when the state promoted a centrally planned economy. The new 2001 Copyright Law is a complex law, incorporating 79 articles and an Annex with 32 definitions.³⁴

32 Article 94 states: ‘The State shall protect rights relating to intellectual property, including copyright and shall promote the practice and dissemination of literature and art.’

33 Supra note 17.

34 Mozambican Copyright Law of 2001: Lei nº 4/2001 de 27 de Fevereiro de 2001 que aprova os Direitos de Autor.

National intellectual property strategy

In 2007, the Mozambican Government approved the National Intellectual Property Strategy and its Action Plan.³⁵ 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 of an intellectual property regime that may serve the national interests in terms of economic, social, technological, scientific and cultural development of the country. But the context in which the Strategy was drafted was characterised by concern for protection of the rights of the creator and capturing value from local products. The Strategy therefore does not provide measures to safeguard access to knowledge by users.

Eduardo Mondlane university research policy

In June 2007, the Eduardo Mondlane University (UEM) adopted a Research Policy³⁶ which establishes that research activities are governed by internationally accepted ethical principles, demanding respect for intellectual property. 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 broad principles but does not contain detailed provisions on the management of intellectual property. UEM will soon enact a specific IP Policy in which such issues will be tackled.

Flexibilities in the Mozambican Copyright Law of 2001

Kinds of copyright-protected works

The copyright system provides the owners of protected works with a temporary monopoly for the economic exploitation of their works. The monopoly allows the creators or the copyright-owner to benefit financially 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;

35 Estratégia Nacional da Propriedade Intelectual (2007) Conselho de Ministros, Maputo.

36 Eduardo Mondlane University Research Policy (2007) University Press, Maputo.

- 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;
- l)* expressions of folklore.

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

Scope

In Articles 7 and 8, the Mozambican Copyright Law outlines the scope of 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; and 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.

Term of protection

Both the Berne Convention and the 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, however, according to Article 22 of the 2001 Copyright Law, protection of copyright lasts for 70 years from the death of the author. 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 perpetual protection for moral rights.

Table 6.3 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 (even though Mozambique is not a signatory to the WPPT).

Table 6.3: Comparison of terms of protection

Right	TRIPs (Years) *	Berne Convention (Years) *	WPPT (Years) *	Mozambique Copyright Law (Years) *
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
Anon/ 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 signatories may grant terms of protection in excess of those provided by the Convention and the Mozambican Copyright Law of 2001 does so 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 adopted the standard terms so that works would fall in the public domain more quickly, thus facilitating easier public access in a shorter period of time.

Limitations and exceptions

The Berne Convention and TRIPs³⁷ 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.³⁸ Those conditions largely consist of the so-called ‘three-step test’,³⁹ 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.

Therefore, the 2001 Copyright Law followed the exceptions and limitations established by the Berne Convention.⁴⁰ 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.

Reproduction for private purposes (Article 9(1))

The monopoly that vests in the author does not encompass prohibition of private use of the work.⁴¹ 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.’

37 TRIPs Article 13 states: ‘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.’

38 K. Crews *Study on copyright limitations and exceptions for libraries and archives* (2008) WIPO Standing Committee on Copyright and Related Rights, Geneva, XVII Session, Geneva 3-7 November 2008 (WIPO doc SCCR/17/2). Available at www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192 [Accessed 15 November 2008].

39 ‘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.’ E.S. Nwauche ‘Open access and the public interest in copyright’ (2008) presentation to Conférence sur la publication et la diffusion électronique; *La Mise en ligne des revues scientifiques africaines: Opportunités, implications et limites* 6–7 October 2008, Dakar at 8. Available at http://www.cadesria.org/Links/conferences/el_publico8_Eng/enyinna_nwauche.pdf [Accessed 10 November 2008].

40 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 with regard to copyright.

41 J. de Oliveira Ascensão *Direito civil—direito de autor e direitos conexos* (1992) Coimbra Editora, Coimbra at 200.

Quotations (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 and author's name are mentioned. However, the quotation has to conform to the 'normal custom and practice' and its extent must not exceed what is necessary to achieve its purpose. But what is '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.

Reproduction for educational purposes (Article 11)

Article 11 is the most important exception directly related to access to learning materials. 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 reprography⁴² 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 fit within the exception. Some of the academics interviewed indicated, informally, that 10 per cent of a work would seem to be a fair amount of reproduction.

Reprographic reproduction for libraries and archive services (Article 12)

An exception in Article 12 for libraries and archives allows the reproduction of part of, or entire, works (according to the specific case) if the activities of the institutions 'are not directly or indirectly profit-making'. Entire works may be reproduced by those institutions but only in isolated cases (such as replacement or preservation), meaning that the library may not put the work at the disposal of everybody for free reproduction at any time they want. In addition, Article 12(2)(b) clarifies that, if repeated, reproduction must occur on separate, unrelated occasions, meaning that multiple copies cannot be made on a single occasion.

42 Definition 32 set out in the Annex to the Copyright 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".

According to Article 12(3), reproduction of an entire work is possible when such a copy is intended to preserve,⁴³ or if necessary replace,⁴⁴ a work in the permanent collection of a library or archive service, if the work has 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 there seem to be none in Mozambique anyway. Indeed, the majority of the libraries are public 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 also provide cultural centres, including libraries accessible to the public.⁴⁵

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.

Visually impaired people

More than 700 000 people are affected by visual difficulties in Mozambique. Among them 200 000 are blind, but only around 500 are able to read in Braille and only three hold university degrees.⁴⁶

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.

43 '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.' Crews *supra* note 38 at 51.

44 'Replacement...usually involves the making of a copy specifically to replace an item that already has been lost from the library collection, or [if] the original is for other reasons no longer suited for general use.' *Ibid.*

45 The UK Government provides the British Council Library in Mozambique. The diplomatic missions of the US, Portugal and Brazil also provide some important libraries in Mozambique.

46 Lusa: Agência de Notícias de Portugal 'Governo moçambicano lança edição da Constituição em braille' (2008) 14 August 2008.

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 protection and often very little recognition of the needs of visually impaired people.⁴⁷ A 2006 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.⁴⁸

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. It does, however, seem very likely that, at some point in the future, as recognition of the needs of those which visual impairment continues to grow, copying it will become a problem.⁴⁹

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.

Digital works (Articles 4 and 16)

The Mozambican Copyright Law deals in only a minor way with digital issues, making express reference to computer programs in Article 4(1)(a).⁵⁰ 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 program according to the purposes for which it was obtained’;

47 J. 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) 11 to 13 September 2006, Geneva. Available at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696 [Accessed 1 November 2008].

48 Ibid.

49 Ibid.

50 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; ...’

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.

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

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 of remuneration.

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’ (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, as part 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.

Related rights (Article 47)

Article 47 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.

Government works (Article 5)

According to Article 5(a), there is no copyright in the ‘official texts of a legislative, administrative or judicial nature, or official translations thereof.’ Those documents fall immediately into the public domain.⁵¹

There is no express provision in the Copyright Law regarding other government works or works that are created by government employees or officers, or that are government-funded. However, Article 32 provides for 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, the primary owner of the economic and non-economic rights is the author, unless otherwise provided 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.

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.⁵² 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.

51 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 the online official Gazettes is only available, against payment, in a private database, <http://www.atneia.com>.

52 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.’

The Mozambican government has established an entity which is responsible for the management of cultural heritage, the Instituto de Investigação Sócio-Cultural — ARPAC (Arquivo do Património Cultural), under the Ministry of Education and Culture. Protection of folklore extends to performances, as its expression is made through performance and communication to the public. Folklore includes 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.

6.2.2 Judicial and administrative decisions

Mozambique's legal system is civil law-based, so legislation is the primary source of law. Courts base their judgments 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.⁵³

In practical terms, only two copyright-related disputes 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 because the courts usually do not make a decision on cases related to intellectual property.

6.3 Qualitative analysis

6.3.1 Secondary literature

Literature on the Mozambican legal system is generally thin. When the research focus is narrowed to copyright, it becomes difficult to find references.

53 P. Rainha 'Republic of Mozambique—legal system and research' (2008) Globalex. Available at <http://www.nyulawglobal.org/globalex/Mozambique.htm> [Accessed 20 November 2008].

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 general⁵⁴ and the others specifically with the collective management system⁵⁵ and music reproduction rights.⁵⁶ Also, 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 focus specifically on the exceptions and limitations with regard to 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.

6.3.2 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, SOMAS (the Mozambican collective management society), 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.

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 these stakeholders demonstrated awareness that copyright exists, albeit with different levels of detailed knowledge.

54 M.S.A. 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.

55 V. Xavier *A gestão colectiva dos direitos de autor* (2005) TFC-UEM, Maputo.

56 J.J.J. Guambe *Protecção dos direitos do autor no ordenamento jurídico Moçambicano: o caso do disco* (2008) TFC-ISPU, Maputo.

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 and partly on the amounts paid for the purchase of each copy of copyrighted works.⁵⁷

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 limitations on copying of copyright-protected works contained in the 2001 Copyright Law.

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 which require 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 admitted that they knew their behaviour was often illegal, but explained that there was no alternative.

Types of learning materials used or produced

There are clear difficulties in the local 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, copyright was owned by the state, but in recent years, private authors and publishers have become involved, thus owning the corresponding copyrights.

An increasing amount of digital material is being used by students. The digital works are easier to obtain and are cheaper than printed books. The Central University Library of the Eduardo Mondlane University (UEM) is now subscribing

57 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.

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.

Distance learning courses recently adopted by UEM will bring 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.

Ownership of copyright materials

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

Obligations and rights under the copyright system

One interviewee from the UEM Central Library indicated that it is as if the Law does 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 other 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 currently active only in the music sector. There are no royalties collected in relation to exploitation of other kind of materials such as books.

Copyright as an obstacle to access to knowledge

Our research has found 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 cheaply, 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.

The Distance Learning Centre, using materials produced under contract by local teachers, does not see any influence of copyright 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 institutions 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.

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.

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 Policy⁵⁸ that 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 demand: ... 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.’

UEM protects the research that is carried out 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 it will incorporate into the policy a vision of intellectual property that balances protection with access.⁵⁹

Copyright and ICTs

ICTs are having a great impact on access to learning materials. 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. However, the institutionalisation of distance education, the use of online sources by researchers and students and publication of research findings, monographs and 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

58 Supra note 36.

59 Supra note 35.

impacts related to copying and illegal dissemination of learning materials, are expected to result.

There is a new practice in the universities, whereby lecturers post some materials on the Internet, 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 Library give free access to its students, researchers and lecturers. The National Library is now involved in a project of digitisation of the 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 Centre for Distance Learning is a pioneer institution in distance 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, this 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.⁶⁰ The initial idea was to adopt so-called 'Readers', whereby different materials were compiled and put at the disposal of the students. Issues of copyright were not dealt with because the Centre was not aware that it was necessary to have procedures for requesting authorisation from each of the authors incorporated in the 'Readers' materials.

Eventually, the approach adopted was to hire lecturers who were responsible for the conception of the modules for the university. The authors transferred the copyright on the work for up-front 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 available and put at the disposal of the students. Obviously, this poses the issue of authorisation from the authors of the scanned works. The Centre argues that no copyright objections may be raised as the works are scanned only partially, in an allowed proportion. Although the Mozambican Copyright Law does not specify a precise proportion of copying that is allowed, the Centre's position suggests that there is at least growing awareness of potential copyright issues.

In December 2000, the Government of Mozambique published the National ICT Policy,⁶¹ which seeks, in part, to achieve national ICT literacy and the development

60 Interview with the head of the Distance Learning Centre of Eduardo Mondlane University.

61 Política de Ciência e Tecnologia (2003) Ministério da Ciência e Tecnologia. Available at http://www.mct.gov.mz/pls/portal/docs/PAGE/PORTALCIENCIATECNOLOGIA/PUBLICACOES/POLITC_T_0.PDF [Accessed 7 June 2009].

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). Through this programme computers are introduced in primary and secondary schools, although the numbers of computers are still low at public schools, particularly at primary ('primario') and lower secondary ('secundario 1º ciclo') levels and outside the capital city Maputo ('Maputo cidade'), as shown in Table 6.4 and Figure 6.3.

Table 6.4: 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 1°	8,700.00	0.02 %
Ensino Geral Primário 2°	1,320.00	1.14 %
Ensino Geral Secundário 1° Ciclo	156.00	9.62 %
Ensino Geral Secundário 2° Ciclo	35.00	91.43 %

Source: Ministério da Educação e Cultura

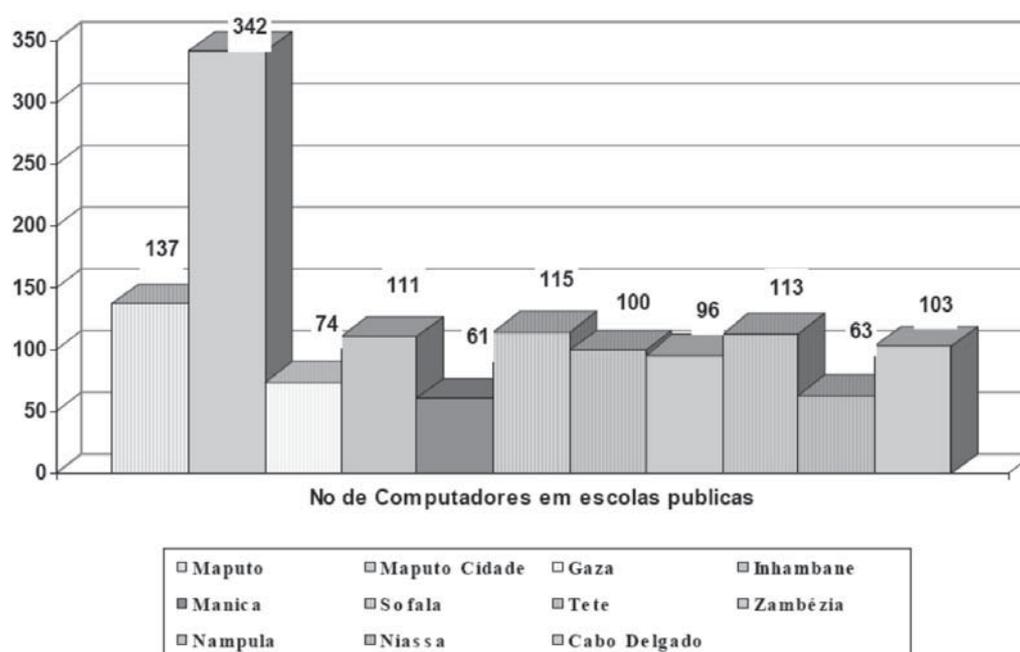


Figure 6.3: Number of computers in public schools per region

Source: Ministério da Educação e Cultura

Participation in drafting or discussing national copyright policies

Apart from the public institutions tasked with 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 of the UEM used to be consulted by the government to give advice on some legal instruments adopted by government or Parliament, 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 in 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 on copyright’.

Awareness of limitations and exceptions

Interviews revealed some understanding that photocopying of copyright-protected works is allowed in some circumstances without authorisation. 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.) During the interviews conducted for this research, some of the academics expressly indicated that they were not aware of the amount of a work that can be copied.⁶²

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 not known to all stakeholders interviewed. As previously stated, the Copyright Law itself does not outline, fully or clearly, the exceptions and limitations permitted by, or outside of, relevant international instruments.

Actions for change

The interviews revealed that the government has taken the following valuable steps:

62 In an interview for this research, one of the lecturers of the Eduardo Mondlane University stated (as translated from the original Portuguese): ‘I am aware that the copyright is not unlimited and partial use is possible...’. On the other side, one of the student interviewees said (as translated): ‘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...’.

-
- approval of some important legal and policy instruments, namely: National Intellectual Property Strategy (August 2007), Copyright Law (February 2001), ‘Lei do Mecenato’ (September 1994);⁶³
 - activities in the field: dissemination activities, book fairs and exhibitions around the country;
 - tax exemptions for import of machinery for industry (including for the publishing industry);
 - tax exemptions for imported books (‘Lei do Mecenato’); and
 - tax exemptions for paper, ink and other materials for the publishing industry.

The interviewees called for additional actions, including calling for the government to:

- implement the National Intellectual Property Strategy;
- take advantage of the Appendix of the Berne Convention in order to facilitate translations into local African languages;
- 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 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 acquisitions;
- devote public investment to purchasing learning materials for poor and vulnerable people; and

63 This Law introduces basic principles that allow individuals, private institutions and public institutions to improve their initiatives in favour of development of arts, culture, science and social activities in Mozambique. (Lei nº 4/94 de 13 de Setembro de 1994 que aprova a Lei do Mecenato.)

- set mechanisms to allow compulsory deposit of copies of Mozambican works in the public libraries in general and in the National Library in particular.

6.4 Conclusions and recommendations

The doctrinal analysis has confirmed that the Mozambican legal framework does not maximise access to knowledge because Mozambique has adopted international instruments without any deep analysis of the advantages or disadvantages of these systems for the local circumstances.

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 were 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.

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 of the author plus 70 years when the TRIPs minimum is life plus 50 years. If knowledge access had been its priority, the government could have adopted the minimum standards for terms of protection in order to allow works to fall into the public domain more quickly.

Access to knowledge could also have been facilitated further by a Mozambican Copyright Law which applied a wider and more expansive range of exceptions and limitations and was accompanied by 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 lacks clarity and would require further elaboration (for example, through 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), parallel imports and provisions for digital works — which are 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 suggests that if the Law

as it exists were enforced, then there should be serious concerns in terms of access to knowledge. 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 the scarcity of books and their prices.

The second conclusion is that 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 depositing the instrument of ratification with WIPO. The government approved the Resolution for the instrument in 1997.

The government might also consider notifying WIPO of the use of the Appendix to the Berne Convention to allow for compulsory licensing of translations of Portuguese-language copyright works into indigenous Mozambican languages. This could boost the local publishing industry, as there are more than 40 indigenous languages spoken in Mozambique.⁶⁴

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 is only the statement in Article 4(1)(a) that the Law applies to computer programs and the reference in Article 16 that clarifies the right of reproduction of computer programs. The legal framework needs to follow the pace of the society and comply with digital principles. However, this framework must be developed with caution, so as not to undermine user access. Adherence to the WIPO Internet Treaties calls for national copyright law to include anti-circumvention provisions which make the circumvention of technological protection measures (TPMs) illegal. The problem is compounded by the fact that the dominant interpretation of these treaties into national law (such as in the US) has been in a manner that does not permit circumvention of TPMs for purposes legitimated by national copyright law, such as use by a student conducting research or a sensory-disabled person adapting the format of a copyright-protected work from text to audio. Before a decision is made on compliance with the Internet Treaties, an in-depth analysis of the advantages and disadvantages of the Treaties is needed in light of national circumstances and interests.

In terms of limitations and exceptions, the Mozambican Copyright Law does not incorporate a general 'fair dealing' or 'fair use' provision but instead lays out exceptions and limitations in great detail. A disadvantage of this system is a limitation of the margin of manoeuvre for the courts in determining permitted uses. At the same time, the exceptions and limitations that are specified in the Copyright Law need to be improved/clarified in order to better serve access to knowledge.

64 'Languages of Mozambique' in M. P. Lewis (ed) *Ethnologue: languages of the world* (2009) 16ed Dallas, TX. Available at <http://www.ethnologue.com> [Accessed 31 March 2009].

For example, the exception that allows reproduction for educational purposes does not clearly answer some crucial questions such as: What portion of a work can be reproduced?

The copyright environment also depends on implementation and practices. The National 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, from the authors of this chapter, 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.

The Mozambican government, in collaboration with academic institutions, civil society and copyright-owners, drafted the National Intellectual Property Strategy with the assistance of WIPO. The Strategy was approved by government in July 2007. Unfortunately, the Strategy does not take into account the access to knowledge dimension. The incorporation of an access to knowledge vision is necessary.

Meanwhile, another policy instrument currently under discussion is the 'Books Policy' drafted by the Ministry of Education and Culture. Again, it is crucial that an access to knowledge dimension is incorporated in this Policy in order to guide all the actions aiming at promoting book production and dissemination and facilitating book access by the majority of the population.

Mozambican academic and research institutions lack internal policies dealing with copyright. The Eduardo Mondlane University (UEM) has a Research Policy that provides some guidance on intellectual property and the UEM is now busy drafting its own stand-alone IP Policy. A positive outcome of this initiative is

crucial in order to encourage other academic and research institutions to adopt similar policies. If proper precautions are not taken immediately, the UEM policy may end up focusing too much on the protection of the rights of the creators and leaving aside the interests of the people wanting/needing to access the created knowledge.

The 2001 Copyright Law should be subjected to policy interventions that could promote the Law's revision in order to address the interests of users. For example, Article 11(b) of the 2001 Copyright Law establishes that it is lawful:

to reproduce by reprographic means for educational purposes or for examinations within educational establishments ... 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.

However, the Law does not indicate specifically what is intended by the words 'normal custom and practice'. If the Copyright Law aims to effectively promote A2K, the provision needs to be changed in order to define this exception more clearly. And a clear policy needs to be defined to underpin such a change to the Law.

Concerning disabled people (especially the visually impaired), parallel imports and digital works — which impact on many people and many areas — it has already been stated that provisions catering to these areas were not included in the Law. The concrete action needed in this regard is to call for policies that may promote the change of the Law by introducing provisions that address those categories, all potentially A2K-enabling.

In sum, the reform of the Mozambican copyright system may be achieved by targeting the following policy instruments:

- the National Intellectual Property Strategy, under the responsibility of the government as a whole, although its adoption was driven by the Ministry of Science and Technology;
- the 'Books Policy' under the responsibility of the Ministry of Education and Culture;
- the 2001 Copyright Law — enacted by Parliament following the proposal tabled by the government through the initiative of the Ministry of Education and Culture; and
- IP policies at academic and research institutions.

The key entity for issues related to copyright is the Ministry of Education and Culture and specifically the Ministry's Copyright Office (in the National Institute for Books and Records).

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