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MOZAMBIQUE

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RELIGIOUS FREEDOM IN THE REPUBLIC OF MOZAMBIQUE

SECTION 1: *Legal Framework*

I. Introduction

Among highly populated nations, Mozambique ranks among the bottom five for religious persecution, meaning that the country suffers from the fewest religious restrictions from either governmental or societal sources.¹ According to the Pew Forum, the populace's denominational breakdown is as follows: 63% Christian; 23% Muslim; 1% traditional African religions; and 14% "other."² The government generally attempts to maintain a separation of church and state and does not interfere with Muslim or Christian education or religious practice, such as the appointment of religious leaders. There are, however, some "limited restrictions on religious expression For example, all religious groups are required to register with the government and may not organize as political parties."³ The United States Department of State reported that no particular benefits or privileges were associated with registration, and there were no reports that the Government refused to register any religious group during its 2009 reporting period.⁴ "The Christian Council reported that not all religious groups register, but unregistered groups worship unhindered by the Government."⁵ "There were 739 religious denominations and 162 religious organizations registered with the Directorate of Religious Affairs of the Ministry of Justice."⁶ Despite the apparent statistical lack of religious persecution, this report will demonstrate that the country's legal system may not adequately safeguard against the infringement of religious liberties. The secular emphasis in the constitution, poor judicial education, police corruption, and the existence of certain other human rights violations could create problems for Mozambicans wishing to practice their religion freely.

II. Mozambican Constitutional Provisions

Mozambique's Constitution limits religious freedom, and emphasizes the purely secular

¹ PEW FORUM ON RELIGIONS & PUBLIC LIFE, GLOBAL RESTRICTIONS ON RELIGION 28 (2009), *available at* <http://pewforum.org/uploadedFiles/Topics/Issues/Government/restrictions-fullreport.pdf>.

² Pew Forum on Religion & Public Life, *Islam and Christianity in Sub-Saharan Africa: Mozambique*, Apr. 15, 2010, <http://features.pewforum.org/africa/country.php?c=149>.

³ ROBERT B. LLOYD, FREEDOM HOUSE, COUNTRIES AT A CROSSROADS 2007, COUNTRY REPORT: MOZAMBIQUE 10–11, *available at* <http://www.freedomhouse.org/uploads/ccr/country-7236-8.pdf> [hereinafter MOZAMBIQUE AT A CROSSROADS].

⁴ U.S. DEP'T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2009, MOZAMBIQUE (2009) [hereinafter 2009 RELIGIOUS FREEDOM REPORT], *available at* <http://www.state.gov/g/drl/rls/irf/2009/127246.htm>.

⁵ *Id.*

⁶ *Id.*

nature of the state.⁷ According to article 12, “[t]he Republic of Mozambique [is] a lay State,” and is founded upon the separation of church and state.⁸ Article 12 promises to religious groups “organisational freedom, freedom to carry out their functions[,] and freedom of worship,” but such freedom hinges on conformity to the laws of the nation.⁹ Furthermore, article 12 recognizes the important social role of religion. Mozambique recognizes and esteems “the activities of religious denominations in order to promote a climate of understanding, tolerance and peace, the strengthening of national unity, the material and spiritual well being of citizens, and economic and social development.”¹⁰ According to Article 35, “All citizens are equal before the law, and they shall enjoy the same rights and be subject to the same duties,” regardless of religion,¹¹ and Article 54 explicitly guarantees citizens the freedom of religion and worship:

1. All citizens shall have the freedom to practice or not to practice a religion.
2. Nobody shall be discriminated against, persecuted, prejudiced, deprived of his or her rights, or benefit from or be exempt from duties, on the grounds of his faith or religious persuasion or practice.
3. Religious denominations shall have the right to pursue their religious aims freely and to own and acquire assets for realising their objectives.
4. The protection of places of worship shall be ensured.
5. The right to conscientious objection shall be guaranteed in terms of the law.¹²

III. International Agreements Affecting Human Rights and Human Rights Violations, Generally

Mozambique has ratified the International Covenant on Civil and Political Rights,¹³ International Covenant on the Elimination of all Forms of Racial Discrimination,¹⁴ Convention on the Elimination of All Forms of Discrimination Against Women,¹⁵ and the Genocide

⁷ See, e.g., Christof Heyns & Danie Brand, *The Constitutional Protection of Religious Human Rights in Southern Africa*, 14 EMORY INT’L L. REV. 699, 733 (2000). Before 1975, Mozambicans suffered under an oppressive Portuguese colonial regime. After liberation in 1975, there came a reactionary backlash to the oppressive regime of the past, which involved the Catholic Church:

All schools, hospitals and newspapers controlled by or belonging to the [Roman Catholic] Church were nationalized, without any form of compensation. In 1979, the Government closed a number of Catholic churches, banned religious services in some areas, and restricted the movement of foreign missionaries. Appeals by the Roman Catholic Church for the recognition of its right to exercise its religion freely were met with accusations of past collaboration with the colonial regime and attempts to regain former privileges.

Id. at 736.

⁸ CONST. OF MOZAMBIQUE. art. 12(1)–(2), available at UNHCR Website, Refworld, Nov. 16, 2004, <http://www.unhcr.org/refworld/docid/4a1e597b2.html>. For instance, according to article 76, “Political parties shall be prohibited from using names containing expressions that are directly related to any religious denominations or churches, and from using emblems that may be confused with national or religious symbols.” *Id.* at art. 76.

⁹ *Id.* art. 12(3).

¹⁰ *Id.*

¹¹ *Id.* art. 35. Discrimination based on religion is punishable by law. *Id.* art. 39.

¹² *Id.* art. 54.

¹³ International Covenant on Civil and Political Rights, 23 Mar. 1976, 999 U.N.T.S. 171.

¹⁴ International Covenant on the Elimination of all Forms of Racial Discrimination, 4 Jan. 1969, 660 U.N.T.S. 195.

¹⁵ Convention on the Elimination of All Forms of Discrimination Against Women, 18 Dec. 1979, 1249 U.N.T.S. 13.

Convention.¹⁶ Furthermore, Mozambique is a signatory to the International Labor Organization's Convention on the Abolition of Forced Labor and the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (which defines and criminalizes human trafficking).¹⁷ In 2005, the Mozambican Parliament ratified the Protocol to the African Charter on Human and Peoples Rights and the Rights of Women in Africa.¹⁸ However, Mozambique has not ratified the Optional Protocol to the Convention against Torture.¹⁹

Despite Mozambique's promises on paper, in reality, "[t]here are no effective protections against arbitrary arrest, particularly in the more rural areas."²⁰ According to a Freedom House report, Mozambique's protection of human rights and liberties is "hindered by police misconduct, judicial understaffing, improper pretrial detention, and poor prison conditions."²¹ Although the Constitution prohibits torture and inhumane treatment, the government has charged police officers with "assault, extrajudicial execution of suspects, extortion, and theft" without ever trying the officers (indicating that such Constitutional protections are nominal at best).²² There were other incidents in which activists, street vendors, students, and others were beaten by police, after which no investigations were conducted.²³ In practice, although the Constitution also guarantees the freedom of association and peaceful demonstration, the police have occasionally disrupted public demonstrations.²⁴

IV. Judicial System and Rule of Law

The Constitution ostensibly provides for the rule of law, and every Mozambican supposedly has the right to seek relief in the courts for any violation of his or her Constitutional rights.²⁵ Mozambique maintains a judicial structure,²⁶ but the judiciary is severely understaffed and only moderately educated.²⁷ The Constitution speaks to the power of the courts and the police.

¹⁶ Convention on the Prevention and Punishment of the Crime of Genocide, 12 Jan. 1951, 78 U.N.T.S. 277 [hereinafter "Genocide Convention"]. In addition, the government publicly supported the creation of a National Humans Rights Commission, which was created through legislation passed in 2008. *Mozambique: Assembly Passes Amended Human Rights Bill*, ALLAFRICA.COM, May 27, 2009, <http://allafrica.com/stories/200905270704.html>.

¹⁷ Convention on the Abolition of Forced Labor, 17 Jan. 1959, 320 U.N.T.S. 291; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 25 Dec. 2003, Doc. A/55/383.

¹⁸ Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 25 Nov. 2005, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); *reprinted in* 1 AFR. HUM. RTS. L.J. 40.

¹⁹ Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, 22 June 2006, 42 I.L.M. 26.

²⁰ MOZAMBIQUE AT A CROSSROADS, *supra* note 3, at 8.

²¹ *Id.* at 7.

²² *Id.*

²³ *Id.* at 7–8.

²⁴ *Id.* at 11. For instance, in Nampula in 2005, "police violently broke up a demonstration by high school students. They used batons to disperse the students, who were banging tin cans, and took a number of the students to local jails. The students claim to have informed the education authorities of their intention to demonstrate, and local education authorities condemned the attack." *Id.* (citing *Police Attack Nampula Students*, MOZAMBIQUE NEWS AGENCY, Feb. 11, 2005, <http://www.allafrica.com/stories/printable/200502110548.html>).

²⁵ CONST. OF MOZAMBIQUE, art. 70.

²⁶ *See* CONST. OF MOZAMBIQUE, arts. 223–30; *see also* CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK, MOZAMBIQUE, <https://www.cia.gov/library/publications/the-world-factbook/geos/mz.html> (last visited May 11, 2010).

²⁷ MOZAMBIQUE AT A CROSSROADS, *supra* note 3, at 13.

The police are to “guarantee law and order, to safeguard the security of persons and property, to keep public peace[,] and to ensure respect for the democratic rule of law and the strict observance of the fundamental rights and freedoms of citizens.”²⁸ Notwithstanding such constitutional protections, “understaffing and a lack of the funds necessary to post bond has led to many accused people being held in prison. Furthermore, there are allegations of detainees being held past their prison term.”²⁹ Moreover, “[t]he police are widely seen by Mozambicans as corrupt.”³⁰ Moreover, although the law criminalizes official corruption, the government does not enforce the penalties. According to the U.S. Department of State,

Officials engaged in corrupt practices with impunity. There are no laws against conflict of interest for government officials. No corruption cases involving high-profile individuals were concluded during the Guebuza administration; however, during the year several senior current and former government officials, including the former ministers of interior and transportation, were arrested on charges of corruption. Their cases remained pending, more than a year after their arrests.³¹

The government is replete with “understaffing, procedural delays in bringing criminal cases to trial, severe overcrowding, poor physical infrastructure, and a lack of sanitary conditions and access to basic healthcare.”³² Such understaffing, corruption, and lack of actualized Constitutional protection make it difficult for the government to enforce the laws already in place and for citizens to seek redress in an underdeveloped judiciary. The deficiencies in Mozambique’s judiciary and police power have led to the country’s classification as “a source country for human sex trafficking, both internally and internationally.”³³ Trafficking in Mozambique is described as “rampant,” and the country is considered a “main source countr[y],”³⁴ as “Mozambican women and children are trafficked [primarily] to South Africa or within” the country.³⁵

SECTION 2: *Selected Recent Incidents of Persecution and Other Human Rights Violations*

Mozambique “generally respect[s] religious freedom in practice.”³⁶ There were no recent reports of forced conversions or societal abuses or discrimination.³⁷ According to a recent study by the Pew Forum, Mozambique is listed in the bottom sixty percent of countries on the

²⁸ CONST. OF MOZAMBIQUE. art. 254.

²⁹ MOZAMBIQUE AT A CROSSROADS, *supra* note 3, at 8.

³⁰ *Id.* at 8–9; *see also Mozambique: Mob Justice Killed 78 People in 2009*, ALLAFRICA.COM, May 5, 2010, <http://allafrica.com/stories/201005050991.html>.

³¹ U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, 2009 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES MOZAMBIQUE (Mar. 11, 2010) [hereinafter 2010 HUMAN RIGHTS REPORT], *available at* <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135967.htm>.

³² MOZAMBIQUE AT A CROSSROADS, *supra* note 3, at 8.

³³ *Id.* at 9–10.

³⁴ Martti Lehti & Kauko Aromaa, *Trafficking for Sexual Exploitation*, 34 CRIME & JUST. 133, 213 (2006).

³⁵ *Id.*

³⁶ *See* 2009 RELIGIOUS FREEDOM REPORT, *supra* note 4.

³⁷ *Id.* The Cato Institute, Persecution.org, and Compass Direct News also have no recent reports of religious persecution in Mozambique.

“Government Restrictions Index” and the “Social Hostilities Index.”³⁸ However, the following examples describe recent incidents of other human rights violations in Mozambique. The prevalence of vigilante killings—motivated by societal factors such as increased costs of living and high unemployment—evidences disrespect for the rule of law. The most frequent targets over the past two years were suspected criminals.³⁹

- 1. 25 October 2009:** On October 25, health workers and Mozambican Red Cross volunteers were accused of spreading cholera and attacked by irate mobs in the coastal city of Quinga. Three volunteers were killed. The volunteers were using chlorine to disinfect wells. Press reports speculated that part of the violence might have been due to a linguistic misunderstanding, given that Portuguese is not the first language for many residents (the word for “chlorine” sounds like the word for “cholera”).⁴⁰
- 2. 17 March 2009:** On March 17, thirteen prisoners suffocated to death in an overcrowded jail cell in the northern district of Mogincual. On March 24, the General Command of the police set up a commission of inquiry to investigate the circumstances that resulted in their deaths. At year’s end the results of the investigation were pending.⁴¹
- 3. 21 January 2009:** The Mozambican police claim to have aborted an armed robbery against a shop in central Maputo, shooting one criminal dead and seriously injuring another, according to the daily news source *O Pais*. Eyewitnesses told the paper that a gang of four people attempted to rob an electrical appliance store. Two of the thieves went into the shop to commit the actual robbery while one man stayed outside in the getaway car; the fourth controlled the entire operation from his cell phone. However, there were plain clothes policemen in the vicinity who promptly intervened. They opened fire on the gunmen as they tried to escape from the shop. One died instantly and the second was wounded in the leg. Two managed to escape. *O Pais* published a photo of the two who were shot, lying on the road beside their weapons, an AK-47 assault rifle and a pistol. Although the police’s version of events is uncontested, a report in a second paper, *Noticias*, alleged that in reality it was agents of the private security company “Nandzu Seguranca” who opened fire on the fleeing robbers.⁴²
- 4. Vigilante Killing:** The LDH and other civil society groups claimed [vigilante] killings were related to the increased cost of living, high unemployment rates, sustained high levels of crime, lack of police presence in outlying metropolitan neighborhoods, and an ineffective justice system. Most targets of such killings were suspected muggers, thieves, sexual abusers, and drug dealers.⁴³

³⁸ *Religious Persecution International*, Posting of Doug Bandow to American Spectator Online, <http://spectator.org/archives/2010/04/19/religious-persecution-internat> (Apr. 19, 2010, 6:08 EST). The results of these Indexes were measured by asking questions regarding persecution by the state and private parties.

³⁹ 2010 HUMAN RIGHTS REPORT, *supra* note 31.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² AllAfrica.com, Mozambique: Criminals Gunned Down in Central Maputo (Jan. 21, 2009), <http://allafrica.com/stories/200901210745.html>.

⁴³ 2010 HUMAN RIGHTS REPORT, *supra* note 31. “While nationwide statistics were not available, the press and civil society reported killings by vigilantes, most of which occurred in and around major urban areas, including the capital city.” *Id.*