



MOZAMBIQUE PENAL CODE REFORM CASE STUDY

Documented by Gender Links for the Equality & Justice Alliance (EJA)

Synopsis

The aim of this case study is to document the comprehensive review and reform of the Mozambique Penal Code in 2014 – including reform of sexual offences (including decriminalisation of consensual same sex sexual conduct), domestic violence offences, abortion laws (specifically exceptions to the criminalisation of abortion) and trafficking laws – as a study of successful legislative reform. See Annex A for list of interviewees.

Background

Mozambique is situated in Southern Africa, bordered by Tanzania, South Africa, Swaziland, Zimbabwe, Zambia and Malawi. The total population is 30 684 662 million people as at November 2018, 51.3% women and 48.7% men.¹

Mozambique gained independence from Portugal in 1975. After independence the country went through a civil war that resulted in the adoption of a democratic constitution in 1990. The two political parties, Frente de Libertação Moçambique (FREELIMO) and Resistência Nacional Moçambicana (RENAMO) signed a peace treaty in 1992 ending the 17-year civil war.

The State of Mozambique separates the power between the judiciary, legislative and executive powers. The tasks and powers are set out in the Constitution of the Republic of Mozambique. The President of the Republic who appoints the President of the Constitutional Council, the President and the Vice President of the Supreme Court, the President of the Administrative Court, the Attorney General of the Republic and the Deputy Attorney General of the Republic.²

In recent times there have been several constitutional amendments relating to electoral reform. Ahead of the October 2018 local government election Parliament amended the constitution to ensure that the person who appeared at the top of the winning party's list in a council would become mayor.

In May 2018 the Mozambique Parliament approved a constitutional amendment that will affect the 2019 national and provincial election. Provincial governors will now be selected by the party that wins local elections rather than be appointed by the president - opening the chance for RENAMO to govern some provinces after the 2019 vote.³

¹ <https://countrysometers.info/en/Mozambique> (accessed 01/11/18).

² Article 159/ g) e h) of the Constitution of Mozambique.

³ <https://www.news24.com/Africa/News/mozambique-backs-constitution-reform-to-bolster-peace-20180523>

Legislative and policy development in Mozambique

Since the early 2000s, Mozambique has reformed a range of discriminatory laws and introduced a number of new provisions to strengthen constitutional and statutory equality and non-discrimination protections. The revised Mozambique Constitution, enacted in 2004, contains strong equality provisions that recognise the equal rights of all citizens regardless of colour, race, sex, ethnic origin, place of birth, religion, level of education, social position, marital status of parents, profession or political preference (Article 35) and stipulate the equality of men and women before the law in all spheres of political, economic, social and cultural life (Article 36).

Article 122 specifically requires the State to promote, support and value the development of women in society and in all spheres of the political, economic, social and cultural life of the country. In 2004, Mozambique reformed its Family Law Act, recognising the equality of marital partners; increasing the minimum age of marriage for both men and women to 18 years; and requiring the consent of both parties to a marriage. Following a CEDAW report in 2007, Mozambique ratified the Optional Protocol to CEDAW in 2008. In the same year, Mozambique introduced new legislation on human trafficking. In 2009, Mozambique introduced a new law on domestic violence. In 2011, Mozambique adopted a National Policy on Sexual and Reproductive Health and Right (SRHR) Policy.

Review of the Penal Code of 1886

In a parallel process the First Commission on Human Rights and Constitutional Issues began a process to review the Mozambique Penal Code of 1886 in 2010. A penal code is a compiled list that describes and defines all of the offenses, as well as the law which can be applied and the punishments that can be given.⁴ Manuel Bembele, an official from the First Commission explained that the Penal Code review process included the following steps:

- 2010: Internal consultative process
- 2011: Provincial debates on the draft Penal Code
- 2012: Revising draft Penal Code
- 2013: Parliamentary debates on the revised Penal Code
- 2014: Penal Code referred back to Parliament because civil society organisations pointed out that the Code still had problems regarding the definition of rape and discrepancies between the Code and the law concerning domestic violence
- 2014: Penal Code adopted in December 2014
- 2015: Penal promulgated into law in June 2015

The newly introduced Penal Code contains provisions specifically criminalising domestic violence; permitting abortion in certain circumstances; clearly prescribing sexual offences, including harassment against minors, and human trafficking offences; and criminalising harmful traditional practices. The revised Penal Code also removed the Portuguese colonial era criminalisation of consensual same-sex sexual conduct.

It is important to note that the 2015 Penal Code is currently under review. The review process began a month after its promulgation in June 2015.

What was the social and political context and drivers for legal reform?

⁴ <https://thelawdictionary.org/penal-code/>

Different groups have different ideas on why the Penal Code review occurred. The common perspective was that it was time. The 1886 Penal Code was socially and politically out of sync with the Mozambican context. According to the First Commission, in addition to the national legal and policy shifts Mozambique has signed global, continental and regional commitments to effect change and these were not reflected in the Penal Code.

Amongst others, Mozambique has signed the following conventions relevant to the rights of women, children and other vulnerable groups:

- The Maputo Protocol
- SADC Protocol on Gender and Development
- Sustainable Development Goals
- Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)
- It was clear that the 1886 Penal Code the new legal and policy framework in Mozambique were misaligned and was creating contradictions within the law.

Marie Jose Arthur, Communications Coordinator, at WLSA Mozambique, stated that what was, and indeed still is, needed is a comprehensive gender analysis and change in the Penal Code to reflect the needs of citizens today. The status of women children and vulnerable groups such as lesbian, gay, bisexual, transsexual, intersex, queer and asexual (LGBTIQA) have evolved substantially since the 19th century.

A strong theme from that emerged from the interviews was legacy. The adoption of the new Penal Code occurred in the last part of President Armando Guebuza's term of office. The Penal Code review process began during his tenure as President and he was determined to put in place a lasting and significant legacy before he left office.

Carlos Manjate from Rede Contra o Abuso de Menores (Rede CAME) described how the Penal Code had not dealt with the growing crisis around human trafficking. For example, the Code made reference to sexual acts with children but had nothing on the context relating to children abducted for the specific purpose of being sold into sex slavery.

Forum Mulher's director, Nzira de Deus, suggests that increasing pressure from civil society organisations played a crucial role in the Penal Code review. Civil society organisations had successfully lobbied for specific laws to address gender-based violence, family law including succession and human trafficking legislation. Issues such child marriages and marital rape were not criminalised while abortion was a crime. LGBTIQA rights remain nebulous.

The call for safe abortions in Mozambique started in 1984 with the then Minister of Health and subsequent Prime Minister of Mozambique, Dr Pascoal Macumbi. Macumbi told Parliament that the number of young women dying as a result of unsafe abortions was unacceptable and abortion must become legal. The Coalition for Sexual and Reproductive Rights had a sustained campaign to review the Penal Code and decriminalise abortion from 2011.⁵

⁵ Coalition for Sexual and Reproductive Rights brings together the following organizations: AMMCJ, AMODEFA, AMOG, APARMO, Coalizao', Forum Mulher, HOPEM, Horizonte Azul, ICRW, Lambda, Muleide, Nweti, Pathfinder International, ICRW, and WLSA Mozambique.

Advancing Abortion Rights⁶

By Rita Badiani

As the country representative for Pathfinder in Mozambique, I know first-hand how challenging it can be to advance abortion access and rights in settings with restrictive laws. Until 2014, abortion was permitted in Mozambique only to save the life of the woman and to preserve her physical health (and even those criteria were not widely known or acknowledged by civil society or most in positions of authority).



Recognizing the shortcomings of this law, in 2011, we formed a coalition with other likeminded organisations to advocate for broader abortion rights. Pathfinder firmly believes that a woman's right to terminate a pregnancy is fundamental to her right to choose whether and when to have a child.

To achieve this goal, the coalition developed a strategy that spanned several fronts. We held awareness raising and opinion-changing events with government bodies, we developed and submitted inputs to parliament for a revised penal code, and we implemented a comprehensive media engagement strategy that recruited and trained journalists in sexual and reproductive health and rights.

And eventually our strategy worked! A revised penal code with a less restrictive abortion law was approved and signed into law in 2014.

The proposal to review the Penal Code was initiated by FREELIMO through a motion in Parliament in 2010. RENAMO supported the motion for a review. Parliament directed the First Commission on Human Rights and Constitutional Issues to put in place a process to facilitate the review. Civil society organisations formed the Platform for Women's Right in the Penal Code to provide a coordinated civil society response to the process.⁷

⁶ <https://www.pathfinder.org/advancing-abortion-rights-lessons-from-mozambique/>

⁷ The Platform for Women's Rights in the Penal Code is constituted of the following organisations Forum Mulher, LAMBDA, WLSA, AMMCJ and ROSC with the support of international partners Amnesty International and Equality Now.

What were the stages of the reform process?

Year	Stage	Actions
2010	Internal consultative process	First commission sent letters to different stakeholders to ask for input into the new Penal Code, these included: Members of Parliament Commissions Party caucuses Attorney general's office Courts University academics A Task force was set up in the Ministry of Justice A project plan was developed Civil society was not included. They were asked to join provincial level consultations.
2011	Provincial debates on the draft Penal Code	The draft Penal Code was debated at public consultation forums in 11 provinces. Civil society organisations joined the provincial level debates. Local government representatives could attend the debates as citizens.
2012	Revising draft Penal Code	The consultative process in the provinces provided direction on what should be included and what should be removed from the draft.
2013	Parliamentary debates on the revised Penal Code	The new draft was debated in Parliament. Parliamentarians made decisions on what would be included in the Penal Code. Abortion was highly contested.
2014	Penal Code referred back to Parliament because of the definition of rape and discrepancies between the Code and the law concerning domestic violence	The age of consent was confusing with regard to ages of minor. Confusion around what constituted rape. The definitions of domestic violence in the Penal Code and Domestic Violence Act differed.
2014	Penal Code adopted in December 2014	The Penal Code was tabled in late December 2014. The Code was adopted on the 31 December 2014. Consultation on final draft was limited due to time constraints.
2015	Penal promulgated into law in June 2015	Law came into force.

Jessemusi Cacinda describes the debate in Nampula in 2011

Jessemusi Cacinda was a journalist working for Mozambique Radio in 2011. He covered the debate in Nampula. The province is in the North East of Mozambique with an almost equal number of Muslim and Christian people in residence.

The debate on the revision to the Penal Code was highly contested in the Province. The community supported legal abortion with little opposition.

The debate became quite volatile on the subject of decriminalising polygamy. Polygamy is currently a crime in Mozambique. One of the provisions in the draft Code was the decriminalisation of polygamy. The Muslim members of the community supported this position while the Christian population opposed the provision. The debate was very heated.

The draft Code attempted to criminalise adultery. This was a subject for great debate amongst the community. There was overwhelming support to exclude the provision as it could cause many divorces.

There was also consensus that women could not get raped in a marriage.

The community agreed that sexual violence should be severely punished.

Cacinda observed that women did not speak freely at the debates. However, he had a show from 11h00 to 13h00 on Saturday. Women did not call but sent many SMSs to the show, either commenting or asking questions.

What was civil society's involvement in the reform process?

Civil society engaged in the process through two key networks. The first was through the Platform for Women's Rights in the Penal Code and through the Coalition for Sexual and Reproductive rights. The Platform constituted of Forum Mulher, Associacao Mocambicana Para a Defesa das Minorias Sexuais (LAMBDA), Women and Law Southern Africa (WLSA) Mozambique, Associação Moçambicana das Mulheres de Carreira Jurídica (AMMCJ), Associacao Mulher, Lei e Desenvolvimento (MULEIDE) and Forum da Sociedade Civil para os Direitos da Criança (ROSC) with the support of international partners Amnesty International and Equality Now.

The Platform developed a common vision on what they wanted to include into the Penal Code. They met with the government to engage about revisions to the content. The first step was always engagement and negotiation. When this strategy did not work the platform took to the streets. There were marches, media interventions and other public events to raise awareness garner support for their actions.

The Platform partnered with Amnesty International and Equality Now for external advocacy and support. The international organisations brought external pressure to process. Maira Domingos, the SRHR coordinator from Forum Mulher emphasised the importance of this strategy in her interview.

The Coalition for Sexual and Reproductive Rights brought together the following organisations AMMCJ, AMODEFA, AMOG, APARMO, Coalizao', Forum Mulher, HOPEM, Horizonte Azul, ICRW, Lambda, Muleide, Nweti, Pathfinder International, and WLSA Mozambique. The Coalition ran a coordinated campaign from 2011 to decriminalise abortion. They worked with the Ministry of Health on SRHR overall and used that as an entry point to lobby for safe abortion.

Nzira de Deus explained Forum Mulher's strategy to get support for the changes in the Penal Code Review. Forum Mulher has 85 members in the network, 40 of these are very active. Through the network the organisation ran advocacy campaigns, political dialogues and decision-making workshop for women at community level. Forum Mulher brings representatives of the members together once a year to map key areas of work and to prioritise what will be the focus for the next year. The Penal Code review was prioritised as a key area for the relevant period.

What was the response of religious authorities?

Secretary General of the Conselho das Religioes de Mocambique, Albino Mussuei, stated that overall the religious sector was positive about the revisions to the Penal Code. As religious organisations, however, they could not support abortion. They consider that life exists from conception.

What were the key changes introduced through the revised Penal Code?

The Penal Code review implemented several important changes to the Penal Code in regard to crimes, sanctions and criminal procedure. For the purposes of this case study the focus is on the revisions that affect women, children and the LGBTIQ community.

Homosexuality

The old code targeted anyone "who habitually engages in vices against nature" – but no known prosecutions were brought after Mozambique became independent in 1975. Breaking the law was theoretically punishable by up to three years of hard labour.

Abortion

Abortion had previously been legal only in the case of a threat to a woman's life or health. Women can terminate their pregnancies during the first 12 weeks, except in the case of rape, which would extend the legal period to 16 weeks. It also stipulates that abortions would have to be carried out in approved health centres by qualified practitioners. Abortion is available as a free service.

Women over the age of 16 provide consent for themselves. Anyone below the age of 16 requires consent from someone over 21 (age of majority in Mozambique) to have an abortion. The person may be a parent or trusted adult. There is a 48-hour waiting period before a woman receives an abortion.

Sexual assault

The old Penal Code defined sexual assault and sanctions according to whether the person assaulted was a virgin or not. The new provisions discard the value ridden notion and replaces it with age related delineations. The new provisions on sexual assault in the Penal Code are in two categories. These are:

- Crimes against sexual liberty
- Sexual acts with minors under the age of 16

Crimes against sexual liberty stipulates that in the case of the rape of a minor below the age of 12 consent is not considered at all and that sentencing may be up to eight years. In cases of rape for people over the age 12 consent may be considered in the case and a sentence of up to two years may be given to the perpetrator.

Sexual acts with minors under the age 16 is confusing and contradicts the stipulations in the category Crimes against sexual liberty. The first provision implies that the age of consent is 12 whereas the second talks about 16.

The sentencing for sexual assault is dependent on the judge or magistrate's discretion. The definition of rape is only penetration by a penis.

Human trafficking

Human trafficking is recognised as a crime in the Penal Code. The details of the specific crimes and sanctions are included in the specific human trafficking legislation.

Domestic violence

The Domestic Act addresses violence against women.

Article 245 of the Penal Code, approved by Law No. 35/2014, indicates the victims of domestic violence may be the spouse, ex-spouse, person with whom he/she lives as such, partners or former partners, boyfriends or ex-boyfriends, thus including both sexes and not stipulating any family relationship. Therefore, anyone who is violated in their family environment physical, patrimonial, economic and psychological rights inserted in a family environment can rely on the Penal Code in the aforementioned forecasts.

Thus, domestic violence, under the terms of the new Penal Code, is the type of violence that occurs in a family environment, be it between members of the same family, or between those who share the same as a victim any person, no longer exclusively the woman.⁸

The additional legal matter is whether the 2015 Penal Code super cedes the 2009 Domestic Violence Act. The anomalies in the between the two laws creates options for cases of domestic violence. Judicial officers can choose which law to apply.

What proposed reforms of the Penal Code were dropped or revised during the legal reform process and why?

⁸ <https://jus.com.br/artigos/39887/a-lei-da-violencia-domestica-contra-a-mulher-a-luz-do-novo-codigo-penal-incorporacao-ou-consolidacao>

Adultery

The 1886 Penal Code criminalised adultery. Interviewees suggested that women were held up to a higher standard than men in regard to adultery and welcome its exclusion.

Decriminalisation of polygamy

Polygamy is currently a crime in the Penal Code. There was a proposal to decriminalise polygamy in the new Penal Code. Polygamy places women in an invidious position from a legal, social, economic perspective.

Bullying

There was a proposal to include bullying in the new Penal Code. This is in line with the high levels of bullying occurring at schools. Parliamentarians suggested that this would better as stand-alone legislation or linked to the education laws and policies.

Has the newly introduced legislation been effectively implemented?

Homosexuality

The 2015 Penal Code removed the provision “who habitually engages in vices against nature” that was used to prosecute homosexuals in the past. As stated previously there have been no cases since 1975. After the change in the Penal Code LAMBDA went to the Constitutional Council to challenge the Government’s refusal to register the organisation.

The government had cited a clause in the Law on Associations behind its refusal. The clause declared that organisations can only be accepted if they benefit “the moral, social and economic order of the country and not offend the rights of third parties or the public good”.

LAMBDA and other civil society organisations took the issue to the Constitutional Council and requested that it declare the clause unconstitutional as it illegitimately restricted the right to freedom of association

In November 2017 LAMBDA won their case. They are however still unregistered. Repeated requests to the Ministry of Justice, the body in charge of registering associations, to register LAMBDA have borne no fruit.

Human Rights Watch said that LAMBDA’s treatment was “discriminatory” and that “The failure to register LAMBDA in this arbitrary manner is a clear violation of their right to association, guaranteed under Mozambique’s constitution and in international law.”⁹

The LGBTIQ community in Mozambique do not experience harassment from government. The reality though is that there is no protection. LAMBDA cannot open a bank account because the organisation is unregistered. Their funds are channelled through WLSA Mozambique.

Danilo da Silva, Executive Director of LAMBDA, shared the results of their research to be launched in November 2018. Only one in ten LGBTIQ people in Mozambique have secondary level education. They leave because of stigma and discrimination. When families find out about

⁹ <http://www.mambaonline.com/2017/11/09/mozambique-major-constitutional-victory-lgbtq-community/>

their status they are kicked out their homes. As a result of the lack of secondary education less than 10% of LGBTIQ people have higher education.

The levels of education amongst LGBTIQ people severely impacts their ability to access employment opportunities. Even when they do enter the workforce they face sexual harassment and discrimination on the basis of their sexual orientation and gender identity although this is prohibited by the Labour Law and the constitution.

Currently marriage is governed through the Family Law of 2004. The law defines marriage as the union of a man and women only. There must be a review of the Family law to include the LGBTIQ community. While the absence of harassment is a positive thing it does not guarantee the rights of LGBTIQ people. The community is safe because of the current administration's good will.

The newly elected President of Brazil provides a chilling example of why laws and policies must be in place and not left to "good will".

In nearly three decades as a congressman, Jair Bolsonaro has never concealed his dislike of gay people. "Yes, I'm homophobic – and very proud of it," he once proclaimed. Activists, however, say that while violence and discrimination against the LGBT community have long existed, Bolsonaro's brazen bigotry has helped launch a new era of brutality and threats. "It's as if the gates of hell have been opened – as if hunting season had been declared," said Beto de Jesus, a veteran LGBT activist and founder of São Paulo's huge annual gay pride parade. "It's barbarism."¹⁰

Frank Lileza, Communications Officer at LAMBDA, explained that as a queer person there is never an absence of fear. One cannot live freely there is always a lack of security and it is difficult to plan the future. Delfia (not her real name), who has been in a relationship with her female partner, for the last seven years expressed it best when she said: "I don't exist in Mozambique."

Abortion

The decriminalisation of abortion in the 2015 Penal Code is the culmination of over 30 years of activism by medical professionals and SRHR activists. Starting with Pascoal Macumbi in 1984. During his tenure as Minister of Health, Macumbi provided guidelines for health facilities to treat unsafe abortions and provided Parliament with facts and figures the levels of young women who were dying as a result of unsafe abortions.

The Mozambican Association of Obstetricians and Gynaecologists (AMOG) have been lobbying for legal abortion since then. From 1989 medical professionals challenged the law and provided people with safe abortions. They were threatened with imprisonment.

Ivone Zilhao, the SRHR doctor at Pathfinder, explains the evolution of the Abortion struggle in Mozambique. In 2006 AMOG conducted a national consultation on Safe abortion legislation. Unfortunately, the initiative was unsuccessful. The organisation and SRHR organisations persisted with their lobbying and advocacy coming together into a Coalition in 2011.

¹⁰<https://www.theguardian.com/world/2018/oct/27/dispatch-sao-paulo-jair-bolsonaro-victory-lgbt-community-fear>

The Coalition stepped up the pressure in light of the Penal Code review. Abortion was declared legal. The current status illustrates the gap between having a right and being able to access the right.

Otillia Tualufo, President of the Association of Midwives explains how the Abortion legislation has been implemented. The Association in partnership with Pathfinder has trained maternal and child health nurses in all provinces and districts. Currently, Pathfinder is providing the medication and equipment to provide abortion at health centres. This is not a sustainable plan and requires urgent attention.

There is no mass information campaign to inform the public that the service is available and free. In interviews in a rural health centre in Namaacha, and in an urban health centre in Boane, nurses said they are doing four to five abortions a month. The lack of information and awareness raising has resulted in a lack of uptake of the service. Boane Health Centre, sees about 20 patients per month who are admitted after unsafe abortions.

Three additional issues in this regard are the requests for fees for the service and the health professional to conduct the service. In the past patients would bribe health professional to do abortions. Some nurses are refusing to do abortions without a fee. When you request an abortion, you have to go home and think about it for 48 hours and then come back. Many people change their minds during this time.

Anyone below 16 has to get consent from a parent or trusted adult over 21 to have an abortion. This is in line with an overarching clause in the Penal Code that states that anyone under 16 cannot give consent. There has to be harmonisation on the ages of consent and a discussion on girls younger than 16 finding someone to provide consent for them. The graphic illustrates the different ages in different areas.

Age where consent is not considered for rape	Age where consent is considered for rape	Age of consent for abortion and marriage	Marriage with parental consent	Abortion with adult consent	Age to vote	Age of majority
12 and below	Over 12	16	12 – less than 16	Less than 16	18	21

Nurses are refusing to do abortions on religious or cultural grounds. If this occurs the nurse is moved to her another department because the Ministry is upholding the right to freedom of choice and association. This is creating shortages in the number of health professional available to do abortions in health centres.

The health centres are currently not equipped with administrative wherewithal to do abortions. There are no consent forms. Nurses write a form of words on a piece of paper that the patient signs. This is a legal risk and requires an urgent intervention. This links with issues confidentiality. The better resourced health centres have stand alone facilities that guarantee confidentiality. Others require patients to come through a common reception making them vulnerable to identification.

It has been posited that one of the reasons for the post 2015 Penal Code review is to introduce a clause that reads: The protection of life in utero. This will create a contradiction with the current abortion provisions. The latest version of the post 2015 Penal Code is imminent, as soon as it is available it has to be confirmed whether the clause is included or has been removed. This is of great concern.

Sexual assault

The new Penal Code includes provisions that have created confusion within the same legislation. The two section on Crimes against Sexual Liberty and Sexual Acts with minors under 16 provides two different frames of reference. The first states that the age consent is 12, the second implies it is 16. It also has different prescriptions for sanctions. This will give judges and magistrates discretion in sentencing. This opens the door for inconsistency and potentially grounds for appeals.

This must be addressed in the current review.

Human trafficking

The Penal Codes deals with human trafficking in a way that should be applied to all areas where specific laws exist. The Code says that human trafficking is a crime and the details are contained in the 2008 Human Trafficking Law. This avoids confusion and creating contradictions between different pieces of legislation.

Domestic violence

The treatment of domestic violence in the Penal Code requires urgent review. The 2015 Penal Code change the nature of the crime from abuse of women to abuse of anyone in a familial setting. It does not stipulate the relationship of the people concerned. One of the hard-won battles in South Africa on sexual and domestic violence is that people have to state even in murder cases the relation of the accused to the victim. This provides clarity about the type and nature of the crime.

The new provision obfuscates the nature of domestic violence experienced by women. The legal conundrum is that the 2015 Penal Code fundamentally changes the Domestic Violence Act. This could result in the newer law expunging the older one. The contradiction between the two pieces of legislation must be resolved now. It will create confusion for the judiciary as well people experiencing domestic violence.

Local involvement

During the research interviews were conducted with local councils in Namaacha (rural) and Boane (urban). Both interviews underscored the lack of communication and awareness on the changes in the Penal Code as well the limited consultation that was done at local level. The mayors of both councils, Jorge Tinga and Jacinto Loreiro, were not involved in the review. They are waiting for a briefing from the national government on how this will affect their councils.

While health is not a local government competence they often have to address gaps in services and issues that arise in the community. The mayor of Boane will continue as mayor after the recent local government elections and is very willing to get involved because he sees the effects of teenage pregnancies and early marriages.

There is a need for widespread, multi-focused information, education and communication strategies so everyone is aware of the changes in the Penal Code and how it affects them. In the course of gathering information three young women narrated their personal stories about their experiences. They were all 18 years old and none of them are in school. Perhaps had they known about some of SRHR services available their lives could have been different.

Young women speak out

Aida Isiaias is a young woman from Matola, a community about 15kms outside of Maputo. She was gang raped when she was 14 years old. She was walking home from school when a group of men kidnapped her and kept her for a month. During that time, she was repeatedly raped and violated. She escaped and came back home. She tried to return to school but was taunted and treated disrespectfully. She could not handle the emotional stress. She told us she cannot understand why nothing is being done to her kidnappers. There is a criminal case but it is going nowhere. She lives with what they did everyday but they are free. In addition, she has long term physical damage that prevents her from attending school regularly. All Aida wants is to finish school and study.

Luisa Antonio is from Boane. An urban council about 50kms outside Maputo. She fell pregnant at age 16. The father abandoned her when he found out she was pregnant. She is dependent on her parents and they are not supportive of her and the baby. She desperate to get a job but cannot afford to get someone to babysit her son. She struggles to feed her baby and herself on a daily basis. Luisa had her baby in 2017, two years after the Penal code was promulgated. She didn't know she had any options.

Herminia Raimdo, had her baby in 2017. She was raped and fell pregnant. Neither she nor her parents knew she could get an abortion for free. She did not report the rape because her parents did not want to have problems in the neighbourhood. The rapist knows that she had a baby and wants his son. When asked if she feels any resentment towards the baby she responded that she sometimes gets very angry and has to leave the baby with mum and walk away. She said she will tell her son how he was conceived.

What are the lessons to be learned / points of good practice that emerge from the Mozambique Penal Code reform process?

Overall wins

The Penal Code review resulted in two important gains. The legalisation of abortion is a victory for women and their bodily integrity. Teenage pregnancies constitute a threat to young women's ability to productive citizens, it compromises their ability to fully realise their rights as citizens. Young women, indeed all women, must decide when they will have children.

The provision in the Penal Code can fundamentally change women's lives and futures. The right to safe abortion must be guarded.

The example of the Human Trafficking provision is one that should be replicated. Specific laws on a subject are detailed and cover a broad range of issues. The Penal Code because of its scope cannot be detailed. Moving forward in the new review this is a good practice that should be taken forward.

Timing is everything

The 2015 Penal Code was adopted in December 2014 and promulgated into law in June 2015. The legislation came into effect after a national election. Many of the people involved in the process and the development of the provisions exited government after the October 2014 election. The challenges with implementation and institutional knowledge are directly linked to the change in government that occurred as a result of the election.

The key ministries, Health, Justice and Gender have new Ministers who were not part of the review process. This will affect implementation.

Political will

The issue of timing and political will are intertwined. As new incumbents come into office it is difficult to get on board with the implications of laws that were passed while they were not in office. The issue of abortion is one that divides opinion and one that elicits strong reactions. People sometimes have personal views and values that contradict the provisions of the law.

Civil society needs to ensure that the current incumbents come on board and implement the provisions in the Penal Code

Harmonisation of laws and policies

When developing new legislation, it is important to review all the related laws and policies to ensure that there is a cohesive body of laws. This process is crucial to avoid contradiction and multiple legal stipulations about the same subject matter. The Domestic Violence Act is a case in point.

Also, once the Penal Code was promulgated all associated legislation and policies required review. A priority is the review of the 2011 SRHR policy that will not include the provision of abortion. National guidelines and protocols need to be integrated into the policy.

Planning and budgeting

The project plan for the new provisions in the Penal Code should have included a roll out plan and budget. The current situation with Pathfinder providing equipment and medication is not sustainable. The provisions must be budgeted for and a roll out plan developed in the relevant Ministries.

Information, education and communication (IEC)

All new legislation must be widely publicised and all citizens must have access to information about how the new laws affects them, how they can access it and where services are available. Three years after its promulgation people on the ground are not aware of the changes in the Penal Code. It is particularly important in this instance because the changes in the Penal Code affects so many aspects of citizens' lives.

Accountability and vigilance

One of the key roles of civil society organisations is to ensure that governments are accountable and to be watchdogs. Some of the pitfalls in the new Penal Code must be closely monitored. Laws are not set in stone and a gain could quickly become a loss if there isn't constant vigilance. The current review aims to correct some of the anomalies that were introduced into the 2015 Penal Code. There also appears to be issues that are being introduced such child marriages. This is positive development.

Annex A: List of interviews for the Mozambique Penal Code review case study

Person/ people interviewed	Title/s	Organisation	Type of organisation	Description	Email	Phone no.
Rafa Valente Machava	Executive Director	Associacao Mulher, Lei e Desenvolviment (MULEIDE)	Civil society organisation	Women, Law and Development		
Nzira de deus	Director	Forum Mulher	Civil society organisation	Network of women's rights groups in Mozambique	nzira@forumulher.org.mz	
Maira Domingos	Coordinator for Sexual and Reproductive Health and Rights	Forum Mulher	Civil society organisation	Network of women's rights groups in Mozambique	mairalange2012@gmail.com	
Maria José Arthur	Co- ordinator for Communication	Women and Law Southern Africa (WLSA) Mozambique	Civil society organisation	Working on social justice through legal transformation.	Maria Arthur maria.arthur@gmail.com	
Danilo da Silva	Executive Director	Associacao Mocambicana Para e Defesa das Minorias Sexuais(LAMBDA)	Civil society organisation	The Mozambican Association for the Defense of Sexual Minorities	lambda@lambda.org.mz	
Sally Griffin	Director	International Centre for Reproductive Health Mozambique (ICRHM)	Civil society organisation	SRHR Network		
Ivone Zilhao	Sexual and Reproductive Health Doctor	Pathfinder	Civil society organisation	SRHR Network	izilhao@pathfinder.org	
Katia Amado	Programme Director	Pathfinder	Civil society organisation	SRHR Network	kamado@pathfinder.org	
Nelson Matola		Associação Moçambicana das Mulheres de Carreira Jurídica (AMMCJ)	Civil society organisation	SRHR Network (Association of Women in Judicial Careers)	nelsonmatola@gmail.com	
Juliania Langa		IPAS Health Access Rights	Civil society organisation	SRHR Network	langaj@ipas.org	

Person/ people interviewed	Title/s	Organisation	Type of organisation	Description	Email	Phone no.
Carlos Manjate	Executive Director	Rede Contra o Abuso de Menores (Rede CAME)	Civil society organisation	Works on human trafficking		
Frank Lileza	Communications officer	Associação Mocambicana Para a Defesa das Minorias Sexuais (LAMBDA)	Civil society organisation	The Mozambican Association for the Defense of Sexual Minorities		
Mwema Uaciquete	Independent consultant		Consulting	SRHR expert	muaciquete@gmail.com	
Agripino Mavota	Official	Commission on Social Issues, Gender and Technology	Government	Government Department that facilitated the review.	agripinomavota@gmail.com	
Manuel Bembele	Official	First Commission on Human Rights and Constitutional issues	Government	Government Department that facilitated the review.	-	
Aida Isaias			I story	First hand account	-	
Luisa Antonia			I story	First hand account	-	
Herminia Raimdo			I story	First hand account		
Delfia*			I story	First hand account		
Racquel*			I story	First hand account		
Jorge Tinga	Mayor	Namaacha Municipality	Local government	Rural council		
Annabella Mendes	Councillor	Namaacha Municipality	Local government	Rural council		
Jacinto Loureiro	Mayor	Boane Municipality	Local government	Urban council		
Jessemusse Cacinda	Journalist	Radio Mozambique	Media	Journalist who covered the public consultation in		

Person/ people interviewed	Title/s	Organisation	Type of organisation	Description	Email	Phone no.
				Nampula		
Veronica Eva Bate	Maternal and Child Health Nurse	Namaacha Health Centre	Municipal Clinic	Rural health centre		
Etelvina Muhambe	Director	Boane Health Centre	Municipal Clinic	Urban Health Centre		
Luisa Ganyana	Head of Maternal and Child Health	Boane Health Centre	Municipal Clinic	Urban Health Centre		
Eugenia Juliao	Head of Maternity Services	Boane Health Centre	Municipal Clinic	Urban Health Centre		
Otilia Tualufo	President	Associação de Parteiras Moçambicanas (APARMO)	Professional body	Association of Mozambican Midwives	tualufo@gmail.com	
Albino Mussuei	Secretary General	Conselho das Religioes de Moçambique (COREM)	Religious	Council of Religions in Mozambique	amussuei@yahoo.com	