

End of mission - Visit to Mozambique

Excellencies,

1. The mandate of UN Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity was established by the United Nations Human Rights Council resolution 32/2 in 2016. The mandate answers to the concern of the community of nations about the intolerance, discrimination and particularly egregious abuses against persons who are lesbian, gay, bisexual, and transgender (LGBT), as documented in the two reports produced in 2011 and 2015 by the High Commissioner for Human Rights and the four reports presented by the mandate to the General Assembly and the Human Rights Council of the Organisation. The duties conferred upon me by the community of nations are to bring visibility to the situation of violence and discrimination against LGTB persons, and to provide advice to States in relation to effective measures to address such violence and discrimination.
2. I visited Mozambique from 3 to 10 December 2018 with a view to establishing a panorama of the enjoyment of human rights by LGTB persons and assessing the implementation of existing national and international human rights standards to combat violence and discrimination. During my visit I travelled to Maputo and Nampula where I met with representatives of the executive, legislative and judicial branches, local authorities, and the Ombudsman.
3. I would like to warmly thank the Government of Mozambique for the invitation extended to me to conduct this visit, for its cooperation before it and for its excellent hospitality and cooperation during the visit. I have carefully given attention that many of my interlocutors expressed that this was the first time that they were having an institutional discussion as to the problematic concerning LGTB persons, and I am thankful for the exceptional openness, respect and candour with which all discussions were held, as well as their commitment to thoughtful attention to these matters in the future.
4. I was also thankful to have an opportunity to discuss at great length with leaders and community members of the Islamic faith in Nampula and leaders of other religious denominations in Maputo, as well as with traditional healers in the north. I am always encouraged to discuss with

prominent religious and community leaders: while we can identify areas in which we disagree, I always find that we agree on the fact that violence and discrimination on the basis of sexual orientation and gender identity are never justified and must be condemned and discouraged. I was also thankful to hear, from all interlocutors, their willingness to continue a conversation toward learning how to create spaces of peaceful and respectful coexistence. When creating Resolution 32/2, the community of nations requested that dialogue be one of the guiding principles for my mandate, and I am delighted to have been able to deploy this approach so actively during this visit.

5. I also had the privilege of meeting with a number of civil society organisations working in areas that have significant intersections with the concerns of my mandate, and I benefitted from the cooperation and indispensable support of Lambda Mozambique, an organisation that I deem worthy of praise and support, and of which each and every Mozambican, I believe, should be very proud. Lambda in particular showed great generosity in sharing their knowledge and opinions and facilitated contacts with dozens of members of the LGBT community who, in their turn, shared their life experiences with me.
6. To everyone who met with me, I want to express my gratitude for their readiness to engage in an open and constructive dialogue.
7. I express thanks to the UN Country Team for their assistance.
8. This end of mission statement will be followed by a full report with observations, conclusions and recommendations that will be presented to the Human Rights Council in June 2019, and that will comprise the totality of my advice to the Government of Mozambique.

Excellencies,

9. I designed my visit to Mozambique with certain key features of the country in mind. I was thrilled by the promise of visiting a country with your extraordinary experience of a confluence of traditions and plurality of legal orders, uniquely equipped in my view to deal with the local, national and global implications of the relatively new approach that brings my mandate to a reality as old as humankind itself (sexual orientation and gender identity). I am also convinced that Mozambique's 2015 act to decriminalise same sex relations presented a unique opportunity to identify post-criminal agendas. Finally, I was also

motivated by the opportunities and challenges surrounding social inclusion in a country firmly committed to the furtherance of the goal of leaving “no one behind” within the frame of the SDGs.

10. The experience did not disappoint. I believe this visit will allow the mandate to provide the Mozambican State with a panoramic view of the state of enjoyment of human rights by lesbian, gay, bisexual and trans persons, as well as identifying good practices that I think will be useful for the African context, and the community of nations in general.
11. In particular, I know that some groups and individuals in Africa express the opinion that diversity in sexual orientation and gender identity is a phenomenon that is foreign to the continent, a fabrication or import from other areas of the world. During the last 10 days I met with a wide variety of homosexual men, lesbian women, and bisexual and trans men and women who shared with me their lived experiences of knowing themselves, for as long as they could remember, “different” from the prevailing norm; and to have this awareness connected to sexual desire and gender identity as far back as their memory could take them. They knew, since then, that these features are as fundamental to their identity as their personality, the shape of their heart or the colour of their eyes. Many of these persons referred having had these feeling before they even knew or understood that other persons in the world also had them, before any exposure to persons outside their community, their region and certainly the country. All of these persons deserve respect: Amongst Africans, there are also gay, lesbian, bisexual and trans. To say otherwise is not only delusional: it fuels stigma, discrimination and hatred.

A model with much to teach

12. Before and during my visit I did not receive any information of massive, systematic or flagrant physical violence against LGTB persons in Mozambique. All persons interviewed, all evidence consulted, and all elements of information gathered lead to the conclusion that Mozambique is thus far free from that scourge. Many stakeholders concur when attributing this state of affairs to levels of tolerance within Mozambican society, and to the value attached to consensus-building by all societal actors.
13. This high level of tolerance positively impacts on the forbearance of lesbian, gay, bisexual or transgender people as members of the society who deserve protection and equality of rights and, as I will detail in these

observations, therein lies an extraordinary capital that the society will require to make progress in this area.

14. The social ownership of tolerance is reinforced by constitutional and legal standards. When discussing the eradication of violence and discrimination on the basis of sexual orientation and gender identity, I was positively impressed that all State agents interviewed, including the authorities of the Supreme Court, immediately referred to the standard under Article 35 of the Constitution. In strict juridical terms, however, the non-inclusion of these grounds (sexual orientation or gender identity) and the *numerus clausus* nature of Article 35 could give room to a different interpretation.
15. Similarly, and contrary to my preconception, I found no evidence that the process through which the National Assembly eliminated the criminal type of crimes against nature in previous Articles 70 and 71.4 was the result of a concerted public policy action to combat violence and discrimination on the basis of sexual orientation and gender identity: at the National Assembly I was told that this legislative change had nothing to do with homosexuality which, in the view of my interlocutors, had never been illegal in Mozambique.
16. Thus was disproven one of my working theories, related to the possibility that decriminalisation was a step or a part of a public policy agenda for the promotion and protection of the rights of LGBT persons. Instead, State agents consistently expressed the views of others that the rights of LGTB persons are very negative, that this is a matter of strong social controversy, and that it must be handled with great care and only progressively. This is a view that, I believe, must be challenged. In fact, every single person interviewed during my visit, from religious leaders to political authorities and LGTB activists expressed that in their view there is not one single reason to justify violence and discrimination on the basis of sexual orientation and gender identity. This observation is consistent with an opinion poll conducted in the region that shows that Mozambique is amongst the most tolerant country in Africa with regards to LGBT people, and with national surveys showing that more than 60% of Mozambicans believe that LGBT people should enjoy the same rights as others and more than 65% being of the opinion that they should be protected from workplace discrimination. Another survey, conducted in 2017 by Lambda in the cities of Maputo, Beira and Nampula found that 85% of respondent opposed violence against LGBT people and would come to help them if they were being physically assaulted.

17. So, where is the political problem? As I will detail in these observations, after this visit I am convinced that the problem lies in the State not yet having taken fully on board its responsibility to dispel some misconceptions around this topic.

... but that needs to take steps forward now

18. At the august seat of your National Assembly, I was singularly struck by the following expression from a lawmaker:

You have to understand: homosexuality is not forbidden in Mozambique, but it is also not permitted. In Mozambique we are greatly tolerant, but what happens in other countries of the world – for example men marrying other men – is not something that we can support.

19. I was taken by this statement because it seems to compile all misconceptions that make very difficult an issue that is, in fact, quite simple. Pursuant to the principle of legality, “the principle of principles,” if something is not forbidden in Mozambique, it is permitted. So, after exploring with my interlocutor, I understood that what he meant to say was that homosexuality is not to be promoted. In other words, that the State cannot – and will not – take measures that can be seen as promoting that persons be gay (and, I assume, lesbian, bisexual or trans).
20. I understand the political angle of that concern, but I believe it is the duty of the State to dispel it through education. In fact, homosexuality, lesbianism, bisexuality and gender diversity cannot be promoted just like it cannot be promoted that a person has brown or blue eyes. These are not lifestyles: they are inherent traits of human nature. And I believe that every Mozambican knows that: as one elder lady in a rural community expressed, with great wisdom: *“we, mothers, we always know. We see our children; we know what makes them smile; what makes them dream. So we always know. But if our son likes a boy or our daughter likes a girl we are terrified for them because we know that in their life they will suffer too much, and we are so ashamed because the neighbours will criticize us. So we try to change them, to protect them and to protect ourselves”*.
21. In other words, it is clear that LGBT persons exist, and that they have no say in their nature. What your distinguished lawmaker meant, at the end, is that the State should not promote their ability to live free and equal, that is, openly and proudly. And therein, Excellencies, lies your challenge, because that is precisely what every lesbian, gay, bisexual and trans person is entitled to do pursuant to their human rights.

22. In saying so, I so much appreciate that the Mozambican equation has been singularly successful at protecting these persons from the levels of violence that they face in other corners of the world – in all regions of the world. I commend the Mozambican State and people for that. It shows that within the Mozambican society lies a level of respect to diversity that the Portuguese, British, French and Spanish colonisers should have learnt from when rolling out the anti-sodomy legislations that for centuries have caused so much pain and suffering to millions of people.
23. The other side of the coin, however, is that this social pact comes at a price: inequality and emotional captivity. The tacit social agreement, I conclude, is not to attack homosexuals, lesbians, bisexuals or gender diverse persons as long as their true nature remains invisible. This arrangement might be convenient for some sectors of society, but it is simply not acceptable under international human rights law or the best interest of society. During my visit, LGBT people described to me invisible mechanisms of exclusion that lead to their marginalisation.
24. Exclusion often starts within the family. In a patriarchal society like Mozambique, there is a great pressure on men to get married to pass on the family name and conform to traditional family values. In such a context, people also have difficulties understanding how a man can even think of wanting to be a woman. There is also the perception that gay men are in transition, on the path of becoming a woman. Most parents perceive their children as a prolongation of themselves and consequently wish a stable, quiet and happy life for them in all possible areas of life: professional, personal and social. Consequently, the level of parental intolerance in cases when their child reveals a non-traditional sexual orientation, as highlighted by the Lambda survey referenced above, may turn unbearable. This is compounded by the lack of knowledge about diverse sexual orientation and gender identities and the negative social representation of homosexuality, leading to feelings of shame by families and communities, and internalized homophobia by members of the community. In many instances, when children disclose their non-normative sexual or gender identity, families want to “solve the problem” and seek help to bring LGBT children back on the path of “normality”. In such cases, parents may resort to the services of Churches to “free” them through prayers, and traditional healers, or *curandeiros*, as they believe that their children are acting under “external forces”. Such “treatments” that include both psychological and physical and sexual violence, as exemplified below, have devastating consequences on the

mental and physical health of LGBT children. I have heard many accounts of LGBT children being rejected by their families, expelled from their home, or deprived of financial support and not being able to pursue their studies and facing poverty. As a result, trans women and gay men especially, may resort to sex work to survive.

25. There is a general lack of acceptance of diverse sexual orientations and gender identities by faith-based organizations. I however heard wise words from religious leaders highlighting the need to respect LGBT people, their choice, and stressing the key role of religious leaders in promoting respect and tolerance towards LGBT people, even if they disagree. Given that the vast majority of Mozambicans are religious, such calls would quickly penetrate into households and greatly contribute to the furtherance of the human rights of LGBT people.
26. LGBT people themselves lack knowledge about sexual and gender diversities and the fact that these are normal variations of humankind that have always existed and that are equally valid. As a consequence, members of the community tend to integrate the negative view of the greater society and internalize social prejudice with consequences on their self-esteem and well-being. As a member of the community noted: *"The whole system is designed to exclude LGBT people. There is no widespread violence against us, but we are subjected to exclusion, poverty and psychological violence. These are equally valid forms of violence. The wounds of the soul do not heal, and they have a negative impact all life long."*
27. To protect their families and their communities from shame or by fear of losing social privileges or access to leadership positions, members of the LGBT community tend to conceal their true identity. They end up living a life that matches social expectations but remains unfulfilling, or a double life, with a traditional family as a façade and having same-sex sexual relations in parallel.
28. Stigma and ignorance about diverse sexual orientations and gender identities impact all areas of life. LGBT people face discrimination and violence at home, at school, at work, within their religious communities, when accessing health care services, or seeking protection from the police, among others. In the absence of official studies or statistical data, information on violence and discrimination based on sexual orientation and gender identity is patchy and incomplete. Information shared by

civil society organizations and anecdotal evidences collected during my visit however show clear patterns of exclusion, as illustrated below.

29. According to a recent survey, more than 65% of the Mozambican population believes that transgender people should have the same rights and should be protected from employment discrimination. A majority also believed that they should be allowed to change their legal gender. Trans and other gender non-conforming persons are amongst the most vulnerable. In the absence of possibilities to change their identity and to undergo gender affirmation treatment, they have to face daily instances of stigma and discrimination due to the discrepancy between their gender expression and their gender identity. Transgender persons have to face daily violence in the street, at bus stops, in school, etc. They are mocked, called names, and abused. Some even believe they are demons. A trans woman explained, for example, that she was once at the bus stop where a crowd of youngsters surrounded her and assaulted her to expose her genitals in public to show her biological sex. For transgender people, the discrepancy between their expression as man or woman, and their name and gender marker leads to instances of psychological violence and abuse. A trans woman recounted one of this instance, when the policeman looks at her ID and said *"this is not yours"*. Many other trans women explained similar situations when their masculine name was called in a crowded waiting room of a health facility, leading to mockeries, and scornful looks. Due to stigma and prejudice, many transgender people are expelled from their families and face barriers when accessing education, health care, or work. A transgender sex worker from Maputo told us: *"Before being a sex worker, I was working as a hair dresser, but I was fired because of my gender identity. My boss feared that I would 'contaminate' others."* A trans man in Nampula told me how difficult it was to find a job. He said: *"I applied for a job and was called for an interview, but when they called me with my female name and they saw a man in front of them, they were puzzled. I was not selected for the job."*
30. As a result, many place themselves in situations of vulnerability and high-risk behaviours, for instance engaging in sex work. Trans sex workers told me about instances where reports of violence or abusive behaviour by their client would not be taken seriously by police officers and would rather lead to arbitrary arrests and release upon payment of a bribe by the client. The trans sex workers that I met would complain not being considered a victim of human rights violations and not having their gender identity respected by police officers, who would call them

with their male name. I have however been told that measures are currently taken to raise awareness about the vulnerability of trans sex workers and men having sex with men among police officers.

31. There are many obstacles to the enjoyment of the right to health by transgender people. One of them is linked with the stigma associated with their gender identity that permeates all strata of society, including health professionals. Only a small number of health facilities are known by the community for being LGBT friendly. Despite some guidelines and trainings to health professionals addressing the rights of transgender persons, as a key population in the fight of HIV/AIDS, stigma prevails and health workers are not immune from discriminatory attitudes towards trans sex workers or men having sex with men. Several members of the community told me that they bribe medical doctors to be assigned "good" care giver, one who respects trans people. Others said that they would conceal their gender identity, remove female clothing and attire and pretend to be gay not to be mocked or ridiculed by care givers or by others when health professionals would call them using their male name. Others said they would rather resort to traditional healers to receive treatment for sexually transmitted diseases or have recourse to self-medication. The early closure of health care facilities, i.e. 3pm, constitutes another obstacle for trans sex workers.
32. As indicated above, as a key population, the provision of health to transgender person is exclusively focused on HIV/AIDS. There is no access to gender affirmation treatment, such as surgeries or hormonal therapies. As this is an essential element to affirm their gender identity, transgender persons may risk using artisanal procedures, such as the injection of industrial silicone oil for breast augmentation. Those who can afford it may go to neighbouring countries to get treatments not available in Mozambique. When they come back, however, they will face risks linked to the discrepancy with their legal identity.
33. During the mission, I heard several testimonies of transgender women being ill-treated during their initial detention, such as having their long hairs completely shaved and their female attire confiscated. In addition, transgender persons are placed in male or female prisons on the basis of their biological sex, putting them in situations of great vulnerability to violence, including sexual violence.
34. According to social expectations, women should marry and have children. We heard several testimonies of lesbian women being put

under pressure through financial and other means to conform to these expectations by their families and facing exclusion when attempts to change their sexual orientation fail. A lesbian student was for instance blackmailed by her father, threatened to put an end to her studies and to be brought to traditional healers if she was not stopping seeing other women. Another one told us that she had been rejected by her grandmother who was raising her. She would say: *"You are a grown-up woman, you need to date a man"*. As she was not complying, she stopped paying for her studies.

35. As part of this attempt to change the sexual orientation of their lesbian daughter, several persons mentioned the practice of conversion therapies, or "cures" done by Churches or traditional healers, and the practice of corrective rapes, as a punitive measure for a disease that needs to be cured. I have heard stories of corrective rapes being arranged by the family of the lesbian woman, by the community, or being organized in the context of a "cure" performed by some Churches or traditional healers. I was told, for example, that a lesbian woman living in the Maratane camp was raped by boys from the neighbourhood saying: *"how can a woman love another woman. You must be sexually starving! Let's correct her."*
36. At school, women who would be considered masculine or openly lesbian students would be mocked, bullied and ostracized, they would also be subjected to sexual harassment for them to "change their mind". When applying for jobs, employees would ask those who appear to be masculine to change the way they dress and behave, to conform to social expectations. A lesbian couple also told me that they had been asked by the tenant to pay double rents or to leave their house, as their neighbours refused to live next to a lesbian couple. Despite the fact that the domestic violence law is gender-neutral, I was told by a victim that when she reported violence by her same-sex partner to the police, the officers would not accept it on the account that the law was only covering heterosexual couples.
37. As elsewhere in the world, bisexual people are very invisible. When coming out, they are not taken seriously by their peers who lack knowledge about it and end up being abandoned by their friends. A bisexual refugee living in Maratane settlement told me: *"When I realized I was bisexual, my friends at Maratane abandoned me. The same happened when my schoolmates got to know about my sexual orientation."*

I was feeling very lonely. They used to crack jokes on me, say that I am abnormal."

38. As other members of the community, gay men are put under pressure by their family and their community to conform to social expectations: get married and have descendants. By fear of failing to meet these expectations or of being excluded from their families or their communities, many gay men conceal their homosexuality. A gay boy in Nampula told me, for example: *"If I tell my father about my sexuality, I will become a problem."* I heard many cases of gays being pressured by their family to change their sexual orientations, for instance through "cures" by Churches or traditional healers. If it doesn't work, I have heard that some families place them in the military or in a Church to become priest, others would expel them from their home. Gay men are facing discrimination and violence at school, in health care facilities, and in the world of work. Openly gay students and those who are perceived as feminine, may face bullying and stigma, be ostracized and find themselves caught in a process of destruction leading to exclusion. At work, I have heard accounts of gay who stopped working due to bad jokes, ill-behaviours, and harassment. I heard, for example, the case of a father who learned about the homosexuality of his son and asked his employer to fire him. He then prohibited him to work until he is "cured". Due to social stigmatisation and exclusion, gay men may engage in sex work. In this context, I have heard accounts of cases of institutional violence from the police, as a mean to punish them.
39. Gay men are particularly vulnerable in prison. I heard many concurring testimonies of gay men being raped and being subjected to pressure by other inmates and prison personnel to remain silent. As in any other prison of the world, some inmates have consensual sexual relations. Despite high prevalence of HIV and high level of HIV infection, prison authorities do not provide condoms as they consider that it would "encourage" same-sex sexual relations. I have also heard that they may think that such distribution would lead to the rejection of those using them by the family once released for having "changed sexual orientation in prison".

The role of State institutions and other stakeholders

40. In addressing any instance of violence and discrimination, the role of State institutions is naturally crucial. Whether we talk about the instances of the chain of Justice, or public health, or social services, every

institution depends on the existence of public policy aimed at recognising the existence and particular challenges that LGTB persons face. Yet during my visit it became evident that there is a complete absence of such public policy. The results are manifold:

- a. on one hand, the system itself tends to invisibilize sexual orientation and gender identity as a feature of human existence, and as grounds for violence and discrimination. State agents are therefore badly equipped to address the particular needs of these populations;
- b. this leads to another major concern: the lack of statistics on the basis of sexual orientation and gender identity in every sector, resulting from the absence of appropriate methods of self-identification, data collection and processing. Official statistics will therefore tend to understate the number of incidents, and prejudicial and inexact categorization of cases results in misidentification, concealment and underreporting. The systemic failure in data collection often results in the virtual invisibility of the concerns and problems of LGTB persons;
- c. in its turn, the lack of data leads to the absence of adequate public policies to respond to the valid concerns and problematic of the community.

41. I must have special words of acknowledgment for Mozambique's leading LGTB organisation, Lambda. Seldom in my career have I reported on a context in which a single organisation has taken it, entirely upon itself, to defend the lives and integrity of every LGTB person in a country of almost 30 million persons.

42. It is my understanding that Lambda has not yet received its juridical personality despite complying with all formal and substantial requirements under its right of association. Throughout my visit, I have been singularly struck by the fact that every single stakeholder – without one single exception – has identified it as the indispensable organisation in this field and has made reference to the lack of recognition of its juridical personality as a fact that has no legal grounding. Every single person, without exception. Moreover, Excellencies, after many conversations with LGBT persons in Mozambique I am convinced that through its work Lambda has saved many lives. I am sure that many persons would have considered desperate measures if they had not

found the community that Lambda has created and offers. These are your compatriots, the persons under the jurisdiction of Mozambique whose well-being the State must assure. Every Mozambican, and the Mozambican State, owes a debt of gratitude to this most extraordinary organisation and it is for this reason that I recommend that its juridical personality be acknowledged.

The way forward

43. I will present the full scope of my recommendations in the body of my country visit report. In the meantime, I can advance that my recommendations will fall under three headings:
- a. the establishment of a basic knowledge base: as has been established in these preliminary observations, the Mozambican State knows far too little about its LGTB population. A knowledge base must be established to understand the current state of these persons, including all different elements (i.e. education level, health, economic status) that are determining their lived experience. Usual good practice in this connection takes as points of departure five angles: health, education, economic well-being, personal security and violence, and political and civic participation;
 - b. an inquiry into the allegations of violations through the so-called “conversion therapies” that would be perpetrated in non-State detention facilities;
 - c. the implementation of an awareness-raising campaign within the State structures, other stakeholders such as traditional authorities and traditional healers and the general population;
 - d. the formulation of policies and protocols for key institutions having a role in promoting the social inclusion of LGTB persons; and
 - e. the adoption of legislation against discrimination in all key sectors of social life.
44. In addition, I recommend that the Mozambican State proceed immediately to the granting of the juridical personality of the Lambda Organisation. As I have expressed in these preliminary observations, there is no doubt in my judgement that Lambda is the indispensable

organisation working in partnership with the State, the international community, other civil society and, most importantly, the community of lesbians, gays, bisexual and trans persons in Mozambique. All stakeholders recognise this fact and whatever *realpolitik* considerations must now be reassessed. It is, your Excellencies, not only a juridical imperative according with the law, but most importantly, a moral obligation in the absence of which the State appears to condone discrimination.

Excellencies,

45. Today is Human Rights Day and we commemorate the 70th anniversary of the Universal Declaration of Human Rights. In 2003 a great African, UN Secretary-General Kofi Annan expressed his support for LGBT non-discrimination, stating, "*the United Nations cannot condone any persecution of, or discrimination against, people on any grounds;*" in his open letter of 2014 former President Chissano amplified this message:

We can no longer afford to discriminate against people on the basis of age, sex, ethnicity, migrant status, sexual orientation and gender identity, or any other basis – we need to unleash the full potential of everyone. As an African who has been around a long time, I understand the resistance to these ideas. But I can also step back and see that the larger course of human history, especially of the past century or so, is one of expanding human rights and freedoms. African leaders should be at the helm of this, and not hold back. Not at this critical moment.

46. I am thankful for those words and the wisdom they convey. We are indeed at that critical moment, and I hope that the Mozambican government will live up to its role in it. The canvas of Mozambique's fabric will be greatly enriched by this precious humanity that, currently left out, is expectant to fulfil a role in the making of a great society.

Maputo, 10 December 2018