

University of Vienna

European Master's Programme in Human Rights and Democratisation  
A.Y. 2021/2022

# Learning in Displacement: The right to Education for Internally Displaced Children in Mozambique

Author: João Verdelho  
Supervisor: Tijana Tešanović



## **Abstract**

The right to education is a pivotal right for the development of the child and indispensable for the enjoyment of other human rights. However, as the right becomes universally accepted, its realization for every child continues to encounter obstacles. Unfortunately, since 2017 Mozambique is facing an internal displacement crisis that has severely affected the displaced children's education. This research aims to examine the standards that protect the internally displaced children's right to education and verify the African State's compliance with the obligations resulting from the international, regional and national legal sources. The research concludes that the State fails to respect and protect the right while not ensuring free and compulsory primary education for all children in displacement. Additionally, the research demonstrates the State's inability to tackle gender-based discrimination in the enjoyment of the right. Finally, this paper argues that a violent and abusive military intervention, the generalized corruption, an incompetent international policy, and the focus on fighting terrorism instead of prioritizing humanitarian needs are crucial factors for the State's non-compliance with the obligations.

## **Keywords**

Right to education; Internally Displaced People; Mozambique; Children's Rights;



## Table of Contents

<b>Abstract</b> .....	<b>3</b>
<b>List of Abbreviations</b> .....	<b>7</b>
<b>Introduction</b> .....	<b>9</b>
<b>Methodology</b> .....	<b>11</b>
<b>Literature Review</b> .....	<b>15</b>
<b>Chapter 1: Delimitating the context of the research</b> .....	<b>22</b>
1.1 Defining the right-holder: The concept of Internally Displaced Child .....	22
1.2 The State of Mozambique as the main duty-bearer.....	25
<b>Chapter 2: Internally displaced people’s right to education</b> .....	<b>30</b>
2.1 Justifying education for IDCs .....	30
2.2 Specific challenges for IDCs right to education.....	30
2.3 Adapting of the education’s general concepts to internal displacement .....	32
<b>Chapter 3: International, Regional and National standards on the right to education</b> .....	<b>33</b>
<b>3.1 International Standards:</b> .....	<b>33</b>
3.1.1 Universal Declaration of HR (1948) .....	33
3.1.2 Guiding principles of Internal Displacement (1998).....	34
3.1.3 Convention on the Rights of the Child (1989) .....	35
3.1.4 UNESCO’s Convention against discrimination in education (1960).....	42
3.1.5 International Covenant on Economic, Social and Cultural Rights (1966) .....	42
3.1.6 Convention on the Elimination of All Forms of Discrimination against Women (1979) .....	43
3.1.7 Other International Treaties: .....	46
<b>3.2 Regional Standards</b> .....	<b>46</b>
3.2.1 African Charter on Human and People’s Rights (1981) .....	46
3.2.2 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) .....	48
3.2.3 African Charter on the Rights and Welfare of the Child (1990) .....	48
3.2.4 African Youth Charter (2006) .....	50
3.2.5 African Union Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention).....	51
<b>3.3 National Standards:</b> .....	<b>53</b>
3.3.1 Constituição da República de Moçambique (Mozambique’s Constitution).....	53
3.3.2 Lei do Sistema Nacional de Educação (Law on the National Education System) .....	54
<b>Chapter 4: Response to the internally displaced educative crisis</b> .....	<b>55</b>
4.1 Response of the main actors.....	55
4.1.1 Response of the government .....	55

4.1.2 The role of the International Community:.....	63
4.1.3 The role of the Civil Society .....	65
4.1.4 African Union´s obligations and action.....	66
4.2 Violations of the right to education by the State of Mozambique.....	68
4.3 Justiciability of the right to education: .....	74
<b>Conclusion.....</b>	<b>77</b>
<b>Recommendations: .....</b>	<b>78</b>
<b>Bibliography .....</b>	<b>85</b>

## **List of Abbreviations**

**ADIN** - Agência do Desenvolvimento Integrado do Norte  
**AU** - African Union  
**CDD** - Centro para Democracia e Desenvolvimento  
**CESCR** - Committee on Economic, Social and Cultural Rights  
**CIP** - Centro de Integridade Pública  
**CNDH** - Conselho Nacional dos Direitos Humanos  
**CRC** - Convention on the Rights of the Child  
**ECtHR** - European Court of Human Rights  
**ENNHRI** - European Network of National Human Rights Institutions  
**EU** - European Union  
**FRELIMO** - Frente de Libertação de Moçambique  
**GBV** - Gender-Based Violence  
**HRW** - Human Right Watch  
**HRBA** - Human Rights-Based Approach  
**ICCPR** - International Covenant on Civil and Political Rights  
**ICESCR** - International Covenant on Economic, Social and Cultural Rights  
**IDC** - Internally Displaced Child  
**IDG** - Internally Displaced Girl  
**IDMC** - Internal Displacement Monitoring Centre  
**IDP** - Internally Displaced Person  
**INGD** - Instituto Nacional de Gestão e Redução do Risco de Desastres  
**IOM** - International Organization for Migration  
**ISIS** - Islamic State of Iraq and Syria  
**MINEDH** - Ministério da Educação e Desenvolvimento Humano  
**MT** - Metical  
**NATO** - North Atlantic Treaty Organization  
**PEE** - Plano Estratégico da Educação 2020-2029  
**RECs** - Regional Economic Communities  
**RENAMO** - Resistência Nacional Moçambicana  
**SADC** - Southern African Development Community  
**SAMIM** - Southern African Development Community Mission in Mozambique  
**UDHR** - Universal Declaration of Human Rights  
**UN** - United Nations  
**UNESCO** - United Nations Educational, Scientific and Cultural Organization  
**UNHRC** - United Nations Human Rights Council  
**UNHCR** - The office of the United Nations High Commissioner for Refugees  
**UNICEF** - United Nations Children's Fund  
**USAID** - United States Agency for International Development  
**USD** - United States Dollar  
**USSR** - Union of Soviet Socialist Republic



## Introduction:

Kofi Annan once highlighted that ‘knowledge is power, information is liberating. Education is the premise of progress, in every society, in every family’.<sup>1</sup> Indeed, education is a pivotal tool, not only to guarantee a life with dignity, develop the human personality and fully enjoy other human rights. As education is progressively accepted as a universal right, one must emphasize its fundamental function within the context of a humanitarian crisis. The role in coping with the nefarious effects, and the prevention of further harm while allowing opportunities to reach a life with dignity is indisputable. Nonetheless, ‘just as human rights are universal, so too are the problems associated with their adoption’.<sup>2</sup>

Since 2017, Mozambique has faced an unprecedented flux of internal displaced people (IDPs) in its territory. According to IOM, in June 2022, the number of IDPs had surpassed 850,000 people.<sup>3</sup> The forced movements were caused by the successive armed attacks in the northern region and the natural disasters that devastated the country in recent years. Acknowledging that ‘fifty-two per cent of Mozambique’s IDPs are children’ and considering the crucial role of education for their future, there is an enormous necessity to guarantee that every child can enjoy the right to education to its fullest extent.<sup>4</sup> Bearing this in mind, one must question: Is the right to education realized for IDCs in the Mozambique?

This research project analyses the legal protection of the right to education for the vulnerable group in the context of their displacement. Adopting an international legal positivist perspective combined with a human rights based-approach, this project focuses on the legal obligations of the State of Mozambique as the main duty-bearer. By doing so, aims at responding to the questions: what standards protect the IDCs’ right to education? Is the State of Mozambique complying with the legal obligations? Is the right to education justiciable for the IDCs? And finally, what can be improved in the realization of the right to education for IDCs?

Following the brief overview of the existent literature on the right to education, the first chapter focuses on the delimitation of the right-holders and duty-bearers addressed in the research. The definition of IDCs as the right-holders is followed by the examination of the State of Mozambique’s context, as the main duty-bearer focused on the research. The background analysis covers the historical developments, the general approach to education in the country and the origin of the displacement crisis.

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<sup>1</sup> UN, ‘Press Release SG/SM/6268’ (‘IF INFORMATION AND KNOWLEDGE ARE CENTRAL TO DEMOCRACY, THEY ARE CONDITIONS FOR DEVELOPMENT’, SAYS SECRETARY-GENERAL, 23 June 1997)

<sup>2</sup> Katarina Tomaševski, *Manual on Rights-Based Education - Global Human Rights Requirements Made Simple* (UNESCO Asia and Pacific Regional Bureau for Education 2004) 2.

<sup>3</sup> ‘Country - Mozambique’ (*Operational Data Portal*) <<https://data.unhcr.org/en/country/moz>> accessed 13 July 2022.

<sup>4</sup> ‘Mozambique’ (*IDMC*) <<https://www.internal-displacement.org/countries/mozambique>> accessed 13 July 2022.

The second chapter deals with the necessity to adapt the right to education for children in displacement. It provides a theoretical justification of the right for the vulnerable group, addresses the specific challenges resulting from the displacement and adapts the general concepts of education to the special necessities of IDCs.

The following chapter focuses on the legal analysis of the international, regional and national standards that protect the right to education. It considers soft law and legally binding documents. Furthermore, the obligations of the State of Mozambique resulting from the standards are discussed.

The fourth chapter displays the response of the duty-bearers towards realizing the right to education for IDCs. It analyses the measures of the State authorities, but also briefly targets the role of the civil society, international community, and the actions of the African Union. Additionally, the compliance with the standards by the State of Mozambique is engaged. Furthermore, the chapter addresses the possibility of accessing judicial or quasi-judicial response to the eventual violations of the right to education.

Finally, following the conclusion, there is space for recommendations towards the compliance with the standards and to improve the realization of the right to education for IDCs.

## Methodology

### Problem Setting

Mozambique is facing an unprecedented internal displacement crisis in its territory since 2017. With the numbers raising day by day, many human rights concerns arise with them.

The conflict and natural disasters had a particular impact on the right to education for the IDCs. UNICEF estimates that 522,000 children are now requiring proper ‘learning spaces and materials’ and therefore, in need of access to school.<sup>5</sup> To accentuate the lack of infrastructure and professors, malnutrition and lack of health services are conditions that do not allow the creation of a proper environment to learn.<sup>6</sup> Security remains an important concern, especially in the northern part of the country where the conflict shows no signs of ending. UNICEF further highlights the impact of covid-19 to further increase the ‘vulnerabilities of the affected population, particularly in health, education and nutrition’.<sup>7</sup>

Save the children alerts for the increase of child marriage among ‘children forced by conflict into displacement camps and crowded homes’, doubling the previous number.<sup>8</sup> Additionally, ‘there are continuing reports of grave human and child rights violations, including killings, abductions, recruitment and use of children by armed groups.’<sup>9</sup> To further aggravate the situation, reports of several organizations, including Human Rights Watch, have accused the State military of ‘violations during counterterrorism operations’.<sup>10</sup>

Considering the vulnerability of the children displaced, the protection and fulfilment of their rights should be an absolute priority by the State authorities. In this context, one must consider that ‘those who have been internally displaced – or forced from home within their countries’ borders – are now more vulnerable than ever of missing out on an education’.<sup>11</sup> Furthermore, ‘despite their great vulnerability, internally displaced and migrant children and their specific educational needs are often left out of national educational policies and humanitarian response plans’.<sup>12</sup> In this context, the right to

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<sup>5</sup> UNICEF, ‘Humanitarian Action for Children-Mozambique’ (UNICEF 2022) 2 <<https://www.unicef.org/media/112181/file/2022-HAC-Mozambique.pdf>>.

<sup>6</sup> *ibid.*

<sup>7</sup> UNICEF (n 6).

<sup>8</sup> ‘Rates of Child Marriage Double amongst Thousands of Children Displaced by Conflict in Cabo Delgado’ (*Save the Children International*, 17 May 2022) <<https://www.savethechildren.net/news/rates-child-marriage-double-amongst-thousands-children-displaced-conflict-cabo-delgado>> accessed 6 June 2022.

<sup>9</sup> *ibid.*

<sup>10</sup> Human Rights Watch, ‘Mozambique: Events of 2021’ (*Human Rights Watch*, 22 December 2021) <<https://www.hrw.org/world-report/2022/country-chapters/mozambique>> accessed 4 July 2022.

<sup>11</sup> UNICEF Data, ‘Transforming Education for Internally Displaced Children – Data Lead the Way’ (*Unicef Evidence for Action*, 24 January 2022) <<https://blogs.unicef.org/evidence-for-action/transforming-education-for-internally-displaced-children-data-lead-the-way/>> accessed 6 June 2022.

<sup>12</sup> *ibid.*

education of the approximately half million children is a severe area of concern and should be academically and practically addressed.

### **Theoretical Framework**

This Research Project was based on an International Legal Positivist research perspective in a complementary relation with a human rights based approach.

International Legal Positivism as a perspective in International Law, ‘arose in many ways as a response to critiques of naturalism, and increasing secularism in society’.<sup>13</sup> This new approach, in the words of Collins, ‘came to dominate legal method by the early years of the twentieth century’.<sup>14</sup> However, the author emphasizes the impact of the First World War, in particular ‘the idea that international law could, or should, have been able to prevent the war but had clearly failed in this respect’. This failure led to a process of revisiting the theoretical framework and the departure from classical legal positivism.<sup>15</sup>

In this context, it is imperative to clarify what is intended with International Legal Positivism considering that the international lawyers debate the real meaning and practical consequences of adopting this theory in modern times. Jörg Kammerhofer argues for the existence of two dominant traditions of modern legal positivism, ‘one founded by Hart, being a socio-linguistic variant, and another by Kelsen, being ‘normativistic’’.<sup>16</sup> Following the opinion of the author, in this research project, the adopted theoretical framework was the work of Kelsen and the pure theory of law.

Kammerhofer considers that the ‘Pure Theory of Law is, in a nutshell, a normativist legal positivism with a strong commitment to a theory of science’.<sup>17</sup> The adoption of this view on the International Legal Positivism has several implications. The author states:

Legal scholarship ceases to be scholarship if it seeks to modify the results of a dispassionate analysis for politico-ideological or pragmatic reasons. Doctrinal legal scholarship, in turn, must aim to analyse the law in a methodologically stringent manner.<sup>18</sup>

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<sup>13</sup> Tamara Hervey and others, *Research Methodologies in EU and International Law* (1st edn, Bloomsbury Publishing 2011) 37.

<sup>14</sup> Richard Collins, ‘Classical Legal Positivism in International Law Revisited’ in Jean D’Aspremont and Jörg Kammerhofer (eds), *International Legal Positivism in a Post-Modern World* (Cambridge University Press 2014) 24 <<https://www.cambridge.org/core/books/international-legal-positivism-in-a-postmodern-world/classical-legal-positivism-in-international-law-revisited/2770A9AA3E9742E6FA5670CFA1011B0A>> accessed 11 May 2022.

<sup>15</sup> *ibid* 25.

<sup>16</sup> Jörg Kammerhofer, ‘International Legal Positivist Research Methods’ [2019] SSRN Electronic Journal 11, 7.

<sup>17</sup> *ibid*.

<sup>18</sup> *ibid*.

Practically, the legal analysis should only be based on the juridic reality and must not verse morals or political reasoning.<sup>19</sup> There is a necessity to avoid ‘extra-legal sources such as morality, human dignity or religious doctrine’.<sup>20</sup> According to the work of Kammerhofer, the pure theory of law not only verses the legal basis already mentioned but also a normativist and positivist *strictu sensu* component.<sup>21</sup> On one hand, the normativist component refers to the fact that ‘all law is made up of norms’.<sup>22</sup> On the other hand, the positivist characteristic implies that the law is what is constructed ‘by human willing, not rules created by supernatural beings or which immediately appear to us as a result of human rationality’.<sup>23</sup>

Consequently, the adoption of Kelsen’s Theory of Law has major relevance for the research conducted. Firstly, the analyzed material was composed of legal sources, including a rigorous and merely legal analysis of the international, regional and national standards. Furthermore, the research does not focus on the social and political reality of the State when irrelevant for the right to education or the compliance with norms in question. Finally, the positivist approach in the form of the pure theory of law obliged the separation from personal political and ethical preferences in the realization of the research.

The embracement of this theoretical background is justified by the necessity to focus on the legal sphere of the right to education. The positivist approach not only narrows down the data collection for the feasibility of the research, but also provides the opportunity for an objective approach on the right and State’s obligations.

The Positivist theoretical background was complemented with a HRBA on the Right to Education. Regardless of the inexistence of a universal accepted definition and content of a HRBA, the UN agencies have already determined a common nuclear core of this perspective, considering it a ‘conceptual framework for the process of human development that is normatively based on international Human Rights standards and operationally directed to promoting and protecting Human Rights’.<sup>24</sup> In a HRBA the content of the right in question should be analyzed and determined. Moreover, it is imperative to identify the right-holder of the right addressed and consequently the duty-bearer.<sup>25</sup>

According to the organization Right to Education, in a HRBA right-holders are ‘individuals or social groups that have particular entitlements in relation to specific duty-bearers’.<sup>26</sup> Additionally, the organization defends that ‘entitlements of rights-holders

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<sup>19</sup> *ibid* 8.

<sup>20</sup> Hervey and others (n 14) 37.

<sup>21</sup> Kammerhofer (n 17) 8.

<sup>22</sup> *ibid*.

<sup>23</sup> *ibid*.

<sup>24</sup> ‘UNSDG | Human Rights-Based Approach’ (*UN Sustainable Development Group*)

<<https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>> accessed 7 May 2022.

<sup>25</sup> *ibid*.

<sup>26</sup> ‘Glossary: Rights-Holders’ (*Right to Education Initiative*, 20 November 2015) <<https://www.right-to-education.org/monitoring/content/glossary-rights-holders>> accessed 7 May 2022.

need to be respected, protected and fulfilled'.<sup>27</sup> In the opposite position towards the content of the right, duty-bearers are 'actors who have a particular obligation or responsibility to respect, promote and realise human rights and to abstain from human rights violations.'<sup>28</sup>

The ENNHRI highlights that a HRBA should have two core objectives. Firstly, 'empower rights-holders to claim and exercise their rights' and subsequently 'strengthen capacity of duty-bearers who have the obligation to respect, protect, promote, and fulfil human rights'.<sup>29</sup>

In this light, this research project harmonizes perfectly with a HRBA since it aims at the determination of the right to education's content and the identification of the right-holder and duty-bearer. Furthermore, it focuses on the protection and empowerment of IDCs in Mozambique acknowledging the responsibility of the State as the duty-bearer. Finally, the HRBA allowed a practical and creative solution development that is crucial contribution to the science.

## Research Questions

Adopting the HRBA with a positivist perspective on international law has also contributed to the nature of the research questions. The research evolves around the necessity to understand the content of the right to education and the obligations that the State of Mozambique has on international, regional and national levels. Embracing the HRBA, it remains necessary to verify in practice if the State is realizing the right to education for IDCs to the largest possible extent.

Additionally, in the case of failing to respect, protect and fulfill the right to education, emerges the fundamental doubt of what can be improved in the protection and empowerment of the right-holders. However, a HRBA research would be incomplete without a scrutiny of the possible responses by right-holders in judicial and quasi-judicial terms. Therefore, the questions that guided the project were the following:

- What standards (international, regional, and national) regulate the Right to Education for IDCs in Mozambique?
- What are the positive obligations that derive from the standards?
- Is the State of Mozambique complying with the standards? Is the right being realized?
- In case of non-compliance, is the right to education justiciable?
- What can improve to further realize the right to education of IDCs?

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<sup>27</sup> *ibid.*

<sup>28</sup> 'Glossary' (*Right to Education Initiative*, 3 November 2015) <<https://www.right-to-education.org/monitoring/content/glossary>> accessed 7 May 2022.

<sup>29</sup> 'Human Rights-Based Approach' (*ENNHRI*) <<https://ennhri.org/about-nhris/human-rights-based-approach/>> accessed 7 May 2022.

## Literature Review

The topic of this research project comprises the deep analysis of the right to education in a specific context. Therefore, it is relevant to cover the existent literature on the subject, with the focus, not only on the historical developments but also covering the justification, nature and definition of the right. Additionally, the literature on State responsibility for the right to education will be briefly engaged. Finally, following the relevant literature on the mentioned topics, the importance of this research and its contribution for science is addressed.

### Historic overview on the right to education

Monteiro argues that the education developed in three stages before emerging as a Human Right.<sup>30</sup> The first, pictures education in a familiar and religious reality.<sup>31</sup> Secondly, the period of the Renaissance and the ‘emergence of the bourgeoisie and the capitalism’ contributed to a political and ideological view on education.<sup>32</sup> In this period, the European Christian centric education was transformed in a political tool for State-building.<sup>33</sup> Finally, the 3<sup>rd</sup> stage is the process of internationalization.<sup>34</sup> This was possible due to several institutions such as the League of Nations, the International Bureau of Education and UNESCO.<sup>35</sup>

In the legal sphere, education as a right was absent from the main bills of rights throughout Europe and America in the 18<sup>th</sup> and 19<sup>th</sup> centuries.<sup>36</sup> According to Nowak, the omission was justified by ‘the liberal concept of human rights’ since they were viewed as rights of negative nature, which meant that the State simply should abstain from interfering.<sup>37</sup> Despite this reality, the right to education is present in the Universal Declaration of human rights (UDHR), a fact justified by the presence of Socialist States in the UN that insisted in the inclusion of the Economic, Social and Cultural rights.<sup>38</sup>

The second generation of human rights was eventually included in a legally binding document, the ICESCR, in 1966. However, the different criteria and procedures of implementation demonstrate the reluctance of some States to accept this generation of

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<sup>30</sup> Agostinho Monteiro, *Revolution of the Right to Education* (Brill 2021) 227.

<sup>31</sup> *ibid.*

<sup>32</sup> *ibid.* 230.

<sup>33</sup> *ibid.* 231.

<sup>34</sup> *ibid.* 233.

<sup>35</sup> *ibid.* 4.

<sup>36</sup> Manfred Nowak, ‘The Right to Education – Its Meaning, Significance and Limitations’ (1991) 9 *Netherlands Quarterly of HR* 418, 418.

<sup>37</sup> *ibid.*

<sup>38</sup> *ibid.*

rights.<sup>39</sup> Considering this position, the right to education was not widely accepted with the same status as the civil and political rights.<sup>40</sup>

Further analyzing the historical background, Spring argues that the UDHR was rushed to ‘stop the spread of the nationalism and racism’ and therefore, questions such as the justification of right to education remained unanswered.<sup>41</sup> The author further demonstrates the absence of consensus using the 1990 World Conference on Education for All.<sup>42</sup> In this occasion, some delegates defended the connection between the right to education with ‘liberation and democracy’.<sup>43</sup> On the opposite side, was exposed the necessity of education to relate to the teaching of moral and spiritual values. In this light, it is imperative to address how the right to education is justified and if there is a universal justification to its existence.

### **Justification of the right to education**

Pennock reveals five possible justifications for human rights. Those are the relationship between duties and rights, intuition, social contract, social convention and necessity for happiness.<sup>44</sup> MacKay and Krinke adopt Pennock’s general theory to education and develop several justifications for the specific right.<sup>45</sup>

Firstly, regarding the relationship between duties and rights, since citizens have duties in society, they must be offered tools to comply with the obligations.<sup>46</sup> Among those resources, the authors defend that previous access to education is necessary for the compliance with societal obligations and consequently, the right existence of a right to education is justified.<sup>47</sup>

Another point of view could be the intuitive argumentation. The idea that human rights are intuitive is supported by the preamble of the International Covenants since they define that the rights contained in those treaties ‘derive from the inherent dignity of the human

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<sup>39</sup> *ibid* 419.

<sup>40</sup> *ibid*.

<sup>41</sup> Joel Spring, *The Universal Right to Education: Justification, Definition, and Guidelines* (1st edn, Routledge 2000) 9.

<sup>42</sup> *ibid*.

<sup>43</sup> *ibid*.

<sup>44</sup> J Roland Pennock, ‘Rights, Natural Rights, and Human Rights - A General View’ (1981) 23 *Nomos* 1.

<sup>45</sup> A MacKay and Gordon Krinke, ‘Education as a Basic Human Right: A Response to Special Education and the Charter’ (1987) 2 *Canadian Journal of Law and Society/ Revue Canadienne Droit et Société* 73 74.

<sup>46</sup> *ibid* 76.

<sup>47</sup> *ibid*.

person'.<sup>48</sup> Despite this idea, MacKay and Krinke find that few authors 'would argue that intuitively there is a right to education'.<sup>49</sup>

The authors also present the adaptation of the social contract theory as justification to an individual right to education. Individuals abdicate of a significant part of their autonomy to the power installed by the majority.<sup>50</sup> However, 'every individual retains some of his/her original autonomy as rights, even against the people and their representatives'.<sup>51</sup> The right to education would be among those rights due to the comparison with the right to property. Similar to this liberal right, 'education provides a sense of identity and self-respect; it is a measure of a person's accomplishments; it is essential to society and a means of providing freedom'.<sup>52</sup> Consequently, it should be equated with the right to property and considered retained by individuals.

According to Pennock, rights can also be conventional, since 'they originate as customs and attain binding force from the fact that people have voluntarily accepted them and have come to rely on them'.<sup>53</sup> In this light, MacKay and Krinke present the historic argument that governments overtook the control of educating and therefore a 'long-standing commitment to education has increased parents' reliance on public education'.<sup>54</sup> Additionally, one must consider the importance of education for the state and for individuals as another indicator that it is a conventional right.<sup>55</sup>

Finally, Pennock presents the argument that rights might be justified simply because their existence is necessary to pursue happiness or personal realization.<sup>56</sup> Pennock defends that happiness in this scenario implies rationality and dignity. However, MacKay and Krinke elaborate the argument, including freedom as a third requirement for happiness.<sup>57</sup> Bearing in mind that education increases self-esteem, reduces dependence, and develops rational individuals, the requisites of dignity and rationality are realized. Finally, in agreement with Brougham's statement that education makes 'people easy to lead, but difficult to drive; easy to govern, but impossible to enslave', the authors consider the freedom requirement fulfilled.<sup>58</sup>

On a different perspective from the Pennock, MacKay and Krinke's view, Spring presents a biforked thesis to justify the right to education.<sup>59</sup> The author emphasizes the necessity

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<sup>48</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>49</sup> MacKay and Krinke (n 46) 74.

<sup>50</sup> *ibid* 75.

<sup>51</sup> *ibid*.

<sup>52</sup> *ibid*.

<sup>53</sup> Pennock (n 45) 12.

<sup>54</sup> MacKay and Krinke (n 46) 75.

<sup>55</sup> *ibid* 76.

<sup>56</sup> Pennock (n 45) 12.

<sup>57</sup> MacKay and Krinke (n 46) 76.

<sup>58</sup> *ibid*.

<sup>59</sup> Spring (n 42).

to not observe education in a Eurocentric view since the arguments presented in many of the international discussions were based on culture, economy, and politics.<sup>60</sup> From this starting point, the author elaborates a justification that considers universal.<sup>61</sup> The first argument is based on the current state of the world culture and economy but specially on the effects of colonialism:

A universal right to an education is justified by the necessity for all people to know how the global culture and economy created by colonialism and postcolonialism affects their live, and what benefits or harm might result from them.<sup>62</sup>

The author further defends that the protection of other human rights is strongly connected to education. Therefore, the second argument for justifying universally the right is the necessity of ‘understanding and protecting other human rights’.<sup>63</sup>

### **Nature of the right to education**

Following the justification of the right to education, it becomes relevant to understand the literature on its nature. Observing the International legal scenario, it is common to associate the right to the second generation of human rights. Included in the ICESCR, education is historically associated to positive obligations. Monteiro argues that the right to education is often included in the scope of cultural right, despite being mentioned in article 18 of the ICCPR.<sup>64</sup> The author argues that education is fundamental to the exercise of social and economic rights but also civil and political.<sup>65</sup> In agreement with this opinion, Delbrück states that the right to education has a unique ‘double nature’ being both social and liberal right.<sup>66</sup> Mehedi goes a step further and defends that:

The right to education is a specific and possibly unique case of a right that belongs not only to the first two generations of rights but also to what is termed the third generation of human rights, namely collective rights and solidarity rights.<sup>67</sup>

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<sup>60</sup> *ibid* 229.

<sup>61</sup> Spring (n 42).

<sup>62</sup> *ibid* 229.

<sup>63</sup> *ibid* 230.

<sup>64</sup> Monteiro (n 31) 384.

<sup>65</sup> *ibid*.

<sup>66</sup> Jost Delbrück, ‘The Right to Education as an International Human Right’ [1992] *Articles by Maurer Faculty* 14, 104.

<sup>67</sup> Mustapha Mehedi, ‘THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN

In harmony with Mehedi's perspective, Nowak states that 'the right to education is probably the only right that reveals aspects falling under all three generations'.<sup>68</sup>

### **Definition of the right to education**

Lee highlights that the numerous international legal documents regulating the right to education do not provide a clear definition.<sup>69</sup> The author argues that education can be a negative right simply being the 'freedom to educate someone or to be educated' or a positive right implying actions regarding 'contents, facilities, and funds'.<sup>70</sup> Based on article 26 of the UDHR, Lee states that education can be referred as:

Process through which certain outcomes and goals, such as personality, capabilities, and dignity, can be reached through certain institutional instruction, which may be related to both negative and positive rights'.<sup>71</sup>

Lee criticizes the lack of harmonization in the legal definitions, stating that even jurisprudential sources presents different solutions.<sup>72</sup> In the Case **Brown v. Board of Education**, the United States Supreme Court considered the right as the 'principal instrument in awakening the child to cultural values, in preparing him for later professional training, ... in helping him to adjust normally to his environment'.<sup>73</sup> Differently, the ECtHR in **Campbell v. United Kingdom** defined education as:

Process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development.<sup>74</sup>

Nowak accentuates the right to education as a 'multiplier right', an expression introduced by Katarina Tomaševski to demonstrate the role of education in the enjoyment of other

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RIGHTS The Content of the Right to Education Working Paper Presented by Mr. Mustapha Mehedi' para 51.

<sup>68</sup> Manfred Nowak, 'The Right to Education' in Asbjørn Eide, Catarina Krause and Allan Rosas (eds), *Economic, Social and Cultural Rights* (Second Revised, Kluwer Law International 2001) 252.

<sup>69</sup> Jootaek Lee, 'The Human Right to Education: Definition, Research and Annotated Bibliography' (2020) 34 *Emory International Law Review* 68, 762.

<sup>70</sup> *ibid* 764.

<sup>71</sup> *ibid* 764,765.

<sup>72</sup> *ibid* 765.

<sup>73</sup> *Brown v Board of Education* [1954] US Supreme Court 347 U.S. 483.

<sup>74</sup> *Campbell and Cosens v The United Kingdom* App no 7511/76; 7743/76 (ECtHR 25 February 1982)

rights.<sup>75</sup> The author agrees with the General Comment No.13 of the CESCR that considers education as an empowerment right.<sup>76</sup>

Finally, UNESCO defines education as ‘the process of facilitating learning or the acquisition of knowledge, skills, values, beliefs and habits’.<sup>77</sup>

## **Right to Education and State responsibility**

In a highly dense international legal background regarding the right to education, literature is also well established and verses the state responsibility towards human rights and specifically considering the right to education.

Nowak defends that State responsibility ‘differs according to the precise formulation of the human right concerned’.<sup>78</sup> The author distinguishes the obligations to respect, protect and fulfil. The obligation to fulfil is presented as the most important one, as it requires positive actions that can be obligations of result or conduct.<sup>79</sup>

Regarding the nature of the obligations, Singh emphasizes that the obligations of the state can be legal and political but also moral.<sup>80</sup> The legal obligations derive from the treaties and legally binding documents ratified by the state, which protect the right to education.<sup>81</sup> Naturally, moral and political obligations emerge from recommendations or state declarations.<sup>82</sup>

Considering that the obligations differ in according to the level of education in question and the specific conditions of each State, General Comment No. 13 of the CESCR spotlights four ‘interrelated and essential features’ at all levels of education.<sup>83</sup> The concepts introduced by Katarina Tomaševski are:

First, availability, implying that the ‘functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party’.<sup>84</sup> Secondly, accessibility is also considered essential, meaning that ‘educational institutions

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<sup>75</sup> Manfred Nowak, ‘Chapter 3. Right to Education’, *Human Rights or Global Capitalism* (University of Pennsylvania Press 2016) 57.

<sup>76</sup> *ibid.*

<sup>77</sup> ‘SDG Resources for Educators - Quality Education’ (UNESCO, 9 October 2018) <<https://en.unesco.org/themes/education/sdgs/material/04>> accessed 10 May 2022.

<sup>78</sup> Nowak, ‘The Right to Education – Its Meaning, Significance and Limitations’ (n 37) 421.

<sup>79</sup> *ibid.* 422.

<sup>80</sup> Kishore Singh, ‘Right to Basic Education and State Responsibility’ (2010) 19 *International Journal of Educational Reform* 86, 91.

<sup>81</sup> *ibid.*

<sup>82</sup> *ibid.*

<sup>83</sup> CESCR ‘General Comment No. 13: The Right to Education (Art. 13)’ (1999) UN Doc E/C.12/1999/10 para 6.

<sup>84</sup> *ibid.*

and programmes have to be accessible to everyone'.<sup>85</sup> This reality includes an exigency of non-discrimination, and physical and economic accessibility.<sup>86</sup> Thirdly, the requirement of acceptability addresses the content and format of education that has 'to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students'.<sup>87</sup> The organization Right to Education further adds that acceptability also implies that 'schools are safe and teachers are professional'.<sup>88</sup> Finally, Adaptability demands a dynamic education that can accommodate and adapt to different cultural settings and communities.<sup>89</sup>

### **Relevance of the research project**

A brief analysis of the literature on the topic of education immediately demonstrates its density not only in searching for a justification but also in its nature and definition. Similarly, the topic of State responsibility towards the right has been studied in dept both for theoretical purposes and practical reasoning. In this context, it is imperative to explain the relevance of this research project.

Firstly, the research focus on the right to education on the specific context of the humanitarian crisis in Mozambique, an event insufficiently addressed by the media and scholars. Moreover, the literature about Mozambique's internal displacement crisis is scarce and focus on the reasoning of the displacement rather than protecting the human rights of the displaced. Finally, this research project aims at the analysis of an eventual violation of the right by the State of Mozambique and consequently increase the accountability. In this light, a deep analysis of the right to education in the context, and recommendations towards improving its realization are pivotal on an academic and practical level.

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<sup>85</sup> *ibid.*

<sup>86</sup> *ibid.*

<sup>87</sup> *ibid.*

<sup>88</sup> 'Understanding Education as a Right' (*Right to Education Initiative*) <<https://www.right-to-education.org/page/understanding-education-right>> accessed 10 May 2022.

<sup>89</sup> CESCR 'General Comment No. 13: The Right to Education (Art. 13)'(n84) para 6.

## **Chapter 1: Delimitating the context of the research**

In order to examine the realization of the right to education, one must previously concretize the right-holder and the duty-bearers considered in the research. The internally displaced child must be defined as the protected group of individuals, and the State of Mozambique as the main duty-bearer to realize the right. Regardless of the existence of other duty-bearers, such as the international community or the African Union, the research focus essentially on the State obligations. Nonetheless, a brief coverage of the role of other duty -bearers is present in the fourth chapter.<sup>90</sup>

### **1.1 Defining the right-holder: The concept of Internally Displaced Child**

The Guiding Principles of Internal Displacement determine the concept of internally displaced persons as:

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.<sup>91</sup>

Firstly, it is imperative to establish some distinctions when addressing IDPs. The internally displaced concept is often confused with migrants and refugees, two other vulnerable groups in need of special protection. The distinction between Migrants and IDPs is relatively simple considering the nature of the movement. Migrant is characterized by the voluntary nature of the movement, whereas internal displacement is a forced phenomenon.<sup>92</sup> Moreover, migrants are internationally legally protected by a binding document, a reality that is not present for IDPs at the UN level. Finally, IDPs' movement does not include crossing the border of State in which the movement begun. Naturally, on the contrary, crossing the border is a key element for Migrants.

Similarly to Migrants, Refugees are protected by an international legally binding treaty, and therefore, distinguishing the vulnerable group from IDPs is crucial.<sup>93</sup>

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<sup>91</sup> UNHCR, 'Guiding Principles on Internal Displacement' (22 July 1998) ADM 1.1,PRL 12.1, PR00/98/109

<sup>92</sup> Walter Kälin and Jörg Künzli, 'Protection During Migration, Forced Displacement, and Flight', *The Law of International HR Protection* (Second Edition, Oxford University Press 2019) 488.

<sup>93</sup> Christine Smith Ellison, 'Introduction: A Global Overview of Education and IDPs', *Education and Internally Displaced Persons* (Bloomsbury Academic 2013) 3  
<<https://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=503781&site=ehost-live>>.

Regardless of the shared element of coerced movement, Refugees and IDPs differ on several aspects. In order to attain the status of Refugee, the movement must be forced and caused by conflict or persecution. Demonstrating a broader criteria, people can be considered internally displaced if their movement is originated in conflict, situations of generalized violence, human rights violations, and crucially, natural disasters. This reality is pivotal while analyzing the Mozambican crisis, since it settles every displaced person in a position of equality regardless of their cause for fleeing. However, Ellison argues for the existence of ‘some debating whether those displaced by development projects and even economic migrants in the context of extreme poverty should be considered IDPs’.<sup>94</sup>

Another relevant element, and perhaps the clearest distinctive factor, is that Refugees are required to cross at least one border to attain their status. The border-crossing element is, in the opinion of Kälin and Künzli, the main explanation for a different consideration of the vulnerable groups in international law.<sup>95</sup> Since IDPs do not leave the territory of the State concerned, the main factor considered must be the principle of sovereignty.<sup>96</sup> Consequently, it becomes harder to develop and promote acceptance of a legally binding document that affects a routed principle in international law.

Ellison agrees that the border element is a fundamental factor for IDPs.<sup>97</sup> The fact that the movement is maintained within a state’s recognized sovereignty means that displaced people are generally citizens of the state in which the displacement occurs. Therefore, the IDPs’ protection relies on the state’s authorities, increasing their vulnerability.<sup>98</sup> In accordance with the author, this reality ‘is clearly problematic when it is the national government that is the agent of displacement as was the case in almost half the internal displacement situations’.<sup>99</sup> In this light, IDPs must be addressed with particular care compared to citizens that were not involuntarily removed or had to flee their homes. Among the special necessities, the need for ‘shelter while away from their homes and protection against being forcibly returned to danger zones’ are a priority.<sup>100</sup> Kälin and Künzli further argue that IDPs have additional difficulties originated in the loss of property and documents and might face challenges in settling in a different area of the country.<sup>101</sup>

Following the definition of IDP, to achieve the right-holder addressed in this research, it is necessary to further narrow the concept to define internally displaced child. The Convention on the Rights of the Child establishes that ‘a child means every human being

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<sup>94</sup> *ibid.*

<sup>95</sup> Kälin and Künzli (n 93) 502.

<sup>96</sup> *ibid.*

<sup>97</sup> Christine Smith Ellison (n 94) 3.

<sup>98</sup> *ibid.*

<sup>99</sup> *ibid.*

<sup>100</sup> Kälin and Künzli (n 93) 502.

<sup>101</sup> *ibid.*

below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'.<sup>102</sup>

Another pivotal legal source is the African Charter on the Rights and Welfare of the Child. The article 2 of the regional convention defines child as 'every human being below the age of 18 years'.<sup>103</sup> Similarly, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), to which Mozambique is bound since 2019, establishes that every human being under 18 years of age is a child.<sup>104</sup>

However, it remains relevant to mention that the article 122 of the Mozambican civil code only recognizes the majority status to those who complete 21 years of age.<sup>105</sup> Despite the solution stipulated in the civil legal branch, other sources of Mozambican legislation demonstrate the benchmark of 18 years old for certain rights. The State's constitution, establishes the age of 18 to act towards being awarded Mozambican nationality.<sup>106</sup> Additionally, the right to vote is obtained at the age of 18, a political right deeply associated with majority.<sup>107</sup> Being cognizant of these discrepancies, one must conclude that the civil clause of completing 21 years to attain majority is far from an absolutely accepted standard in the legal order of the state.

Bearing in mind the multiple legal solutions, the age of 18 as the benchmark for the end of childhood will be adopted in this research project. Firstly, 18 years old is a widely accepted age for majority around the 5 continents, a fact demonstrated by the international and regional legal documents. Secondly, when considering the protection of the right to education, the concept of the child present in the human right's documents should prevail when the opposite source is civil domestic law. Finally, the ambiguity of the legal framework in Mozambique reveals that the age of majority varies depending on the legal branch and that the 18 years old benchmark figures as an option of the legislator.

Given the circumstances, the internally displaced child is defined as:

Every human being, under the age of 18, who has been forced or obliged to flee or to leave his/her home or the place of habitual residence, as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who has not crossed an internationally recognized state border.

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<sup>102</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC)

<sup>103</sup> African Charter on the Rights and Welfare of the Child (adopted 1 July 1990, entered into force 29 November 1999) CAB/LEG/24.9/49 (1990) art 2.

<sup>104</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention") (adopted in 23 October 2009; entered into force 6 Dec 2012) art 1.

<sup>105</sup> Código Civil - Decreto-Lei n.º 47 344, de 25 de Novembro de 1966 art 122.

<sup>106</sup> Constituição da República de Moçambique (2004) art 23, 24,25.

<sup>107</sup> Lei n.º 8/2013, de 27 de Fevereiro art 10.

## 1.2 The State of Mozambique as the main duty-bearer

Considering the necessity to strictly analyse the obligations of the Mozambican State towards the IDCs' right to education, one must understand the historical and political context of the Country, the generalized situation of the education and the origin and impact of the displacement crisis.

### **Historical context: centuries of colonialization, decades of war and years of democracy**

Mozambique is a southeastern African country with a brief history of independence. Following centuries of Arab settlement in the region, mainly with commercial purposes, in the 16<sup>th</sup> century, the Portuguese colonizers settled and control the trading routes in the region.<sup>108</sup>

During the decades that followed the second world war, the anti-colonialist movements started to emerge.<sup>109</sup> The UN General Assembly passed the resolution 1415(XV) 'recognizing the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence'.<sup>110</sup> The recognition of the right to self-determination and the achievements of the other ex-colonies in the continent, motivated Mozambique, to start fighting for its independence in 1964. The war for independence was heavily influenced by the international politics of the Cold War superpowers. On one hand, the United States trying to persuade the NATO ally to leave the territories to maintain the influence in the regions and on the other, the USSR, supporting the liberation movements.<sup>111</sup> Eventually, the Portuguese revolution terminated the dictatorial regime and would lead to the end of the war on the African colonies. In 1975, Mozambique became an independent country, and the first president was Samora Machel, the leader of FRELIMO. The party was responsible for the liberation movement and since it was the only political force in the nation, Machel became president without an electoral process.<sup>112</sup> During this time, the party maintained a close relationship with Moscow and Beijing.

The Mozambicans that fled to Rhodesia (current Zimbabwe) constituted RENAMO, an armed group to resist the established government.<sup>113</sup> RENAMO was supported by South

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<sup>108</sup> Malyn Newitt, *A History of Mozambique* (C Hurst & Co Publishers 1995) 21.

<sup>109</sup> Sayaka Funada-Classen, *The Origins of War in Mozambique: A History of Unity and Division* (African Minds 2013) 206.

<sup>110</sup> UNGA Res 1415 (14 December 1960) A/RES/1514(XV)

<sup>111</sup> Funada-Classen (n 110) 208.

<sup>112</sup> Rosário Lira, Pedro Martins and Pedro Cerdeira, 'A descolonização portuguesa: uma cronologia' (RTP) <<https://media.rtp.pt/descolonizacaoportuguesa/pecas/a-descolonizacao-portuguesa-uma-cronologia/>> accessed 5 June 2022.

<sup>113</sup> Corinna Jentsch, 'A War over People: An Analysis of Mozambique's Civil War', *Violent Resistance: Militia Formation and Civil War in Mozambique* (Cambridge University Press 2022) 44

Africa, Rhodesia and the United States.<sup>114</sup> From 1977 to 1992, a civil war between RENAMO and FRELIMO destroyed the country and claimed more than one million lives. Despite the violent past, after the 1994 elections monitored by the United Nations, Mozambique has experienced a period of democracy, in which FRELIMO and RENAMO remain the two essential political forces.

The country has been a Member of the UN and the AU since 1975. However, the two wars resulted in a catastrophic economic situation, and according to the World Bank, Mozambique ranked third lowest in the GDP per capita in 2020.<sup>115</sup> Additionally, the Human Development Index in 2019 was 0.456/1 which corresponds to the ninth lowest score around the globe.<sup>116</sup>

Regarding demographics, the country has the population of approximately twenty-eight million people. One third of the population lives in urban areas, and 67 percent still works on primary sector jobs, including agriculture or fishing making them vulnerable to sudden natural catastrophes.<sup>117</sup>

The official language remains the Portuguese and part of the legal order is still constituted by Portuguese laws from the colonialist period.

### **Education System in Mozambique:**

The general scope of education in Mozambique has changed on several occasions in the 47 years of independence. The Mozambican National Educational System was introduced in 1983 and established mandatory and free primary education.<sup>118</sup> The last systematic modification was in 2021. Primary education until the sixth grade remains free, and the mandatory schooling was increased to the completion of the ninth grade.<sup>119</sup> The educational system is composed of six subsystems: Pre-Scholar education, general education (englobing the concepts of primary and secondary education), adult education, education and formation of professors, professional education and finally, superior

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<<https://www.cambridge.org/core/books/violent-resistance/war-over-people/048AA6A94E8068BCBB3B1DB52BE9C3B6>> accessed 5 June 2022.

<sup>114</sup> *ibid.*

<sup>115</sup> ‘GDP per Capita (Current US\$) | Data’ (*The World Bank*)

<<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>> accessed 5 June 2022.

<sup>116</sup> ‘The Next Frontier: Human Development and the Anthropocene Briefing Note for Countries on the 2020 Human Development Report - Mozambique’ (United Nations Development Programme 2020) 2 <<https://hdr.undp.org/sites/default/files/Country-Profiles/MOZ.pdf>>.

<sup>117</sup> Ministério da Educação e Desenvolvimento Humano, ‘Plano Estratégico da Educação 2020-2029- Por uma Educação Inclusiva, Patriótica e de Qualidade’ (Ministério da Educação e Desenvolvimento Humano 2020) 21.

<sup>118</sup> Lei n<sup>o</sup>4/83 de 23 de Março BR 1 Série Número 12.

<sup>119</sup> Decreto n.º 79/2019 de 19 de Setembro art 5.

education. The multiple developments in the system have led UNICEF to admit that ‘Mozambique has shown its commitment to education’.<sup>120</sup>

However, despite some interesting components, the education in the state still faces multiple challenges. The UN agency notes that in a country with more than seven million children in school-going age, the estimate number of those out of school surpasses one million.<sup>121</sup> Additionally, according to USAID, reports from the government demonstrate the concerning reality of the female literacy rate (47 percent compared to the male literacy rate of 60 percent in December of 2021).<sup>122</sup> The World Bank data reveals that 110,000 girls are out of school in primary school age, a number three times superior to the male indicator.<sup>123</sup>

Concerning health difficulties, in addition to the COVID-19 pandemic, the HIV/AIDS presence remains particularly challenging for the country’s education. Approximately two million people still live with the virus and around 900 thousand children between 0 and 17 years of age became orphans due to the pandemic.<sup>124</sup> Finally, the lack of infrastructures, the existence of professors without the appropriate teaching levels and absence of psychological training, the ongoing inefficiency in the distribution of for free books and alarming levels of poverty constitute challenges for the enjoyment of the right in the country.<sup>125</sup>

### **The internally displaced crisis:**

In 2017, an unknown group of armed men attacked several targets, mainly governmental institutions in the northern region of Cabo Delgado. ISIS has revealed its connections to the insurrection movement that originated the conflict and ended the lives of more than three thousand people.<sup>126</sup> The Mozambican army that ‘significantly shrank after the 1992 peace deal’ had difficulty in matching the group now mentioned by the authorities as “terrorists”.<sup>127</sup> Several doubts about the competence of the Mozambican security forces have emerged and Pigou and Opperman argue that the State’s response was a failure:

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<sup>120</sup> ‘Education - For Every Child, Education’ (*UNICEF*)  
<<https://www.unicef.org/mozambique/en/education>> accessed 5 June 2022.

<sup>121</sup> *ibid.*

<sup>122</sup> ‘Education | Mozambique | U.S. Agency for International Development’ (*USAID*, 18 March 2021)  
<<https://www.usaid.gov/mozambique/education>> accessed 5 June 2022.

<sup>123</sup> ‘Education Statistics | Country - Country at a Glance - Mozambique’ (*The World Bank*)  
<<https://datatopics.worldbank.org/education/country/mozambique>> accessed 5 June 2022.

<sup>124</sup> Ministério da Educação e Desenvolvimento Humano (n 118) 22.

<sup>125</sup> Felix Malache and Amina Amade, ‘Transformando a educação: Desafios e perspectivas do ensino primário em Moçambique’ (I Congreso internacional de innovación en la docencia e investigación de las Ciencias Sociales y Jurídicas, 2021) <<https://2021.inndoc.org/ponencia/transformando-a-educacao-desafios-e-perspetivas-do-ensino-primario-em-mocambique/>> accessed 5 June 2022.

<sup>126</sup> ‘Stemming the Insurrection in Mozambique’s Cabo Delgado’ (International Crisis Group 2021) 303 1.

<sup>127</sup> *ibid* 2.

Mozambique has failed to bring the security situation under control, highlighting concerns about the capacity and competency of its security forces and the related challenges of developing a unified command structure and counterinsurgency strategy that is fit for purpose.<sup>128</sup>

In addition to the armed threat, Mozambique has faced natural disasters that caused unprecedented damage on the regions of Cabo Delgado and Sofala. The areas were severely hit ‘by the two deadliest and most destructive cyclones of the last decades of the country’s history’ in accordance with the BJM Global Health report.<sup>129</sup>

Regarding IDPs, according to the Displacement Tracking Matrix and the International Organization for Migration, in February 2022 the number of displaced persons related to the Cabo Delgado conflict surpassed 740,000.<sup>130</sup> Furthermore, the impact of the cyclones felt in the central region of the country led to more than 100,000 people leaving their homes.<sup>131</sup> On a regular basis, the natural disasters continue to affect the population and the last recorded storm, in March 2022 contributed to the internal displacement of more than 23,000 people.<sup>132</sup>

The numbers are incredibly high, and many difficulties arise to tackle the humane necessities. On one hand, the outbreak of COVID-19 increased the health concerns and the capacity to mobilize resources to IDPs. On the other, the virus is simply another problematic health condition in the country, joining the list of the diarrhea and cholera outbreak, malnutrition or even HIV/AIDS. These health concerns are accentuated in situations of displacement.<sup>133</sup>

The whereabouts of the displaced people is also a major concern. According to UNICEF, the displaced people are mainly within overcrowded host communities (83 percent) and or in ‘IDP camps or resettlement sites’ (17 percent).<sup>134</sup> The main districts affected by the displacement crisis are Pemba and Metuge, receiving 151,553 and 119,317 people respectively.<sup>135</sup> This is particularly concerning considering for the regional institutions,

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<sup>128</sup> Piers Pigou and Jasmine Opperman, ‘Conflict in Cabo Delgado: From the Frying Pan Into the Fire?’ (Rosa Luxemburg Stiftung Southern Africa 2021) 2 <<https://www.rosalux.de/fileadmin/images/publikationen/Studien/Cabo-Delgado-From-The-Frying-Pan-Into-The-Fire.pdf>>.

<sup>129</sup> Vánio A Mugabe and others, ‘Natural Disasters, Population Displacement and Health Emergencies: Multiple Public Health Threats in Mozambique’ (2021) 6 *BMJ Global Health* 1 <<https://gh.bmj.com/content/6/9/e006778>> accessed 5 June 2022.

<sup>130</sup> ‘Mozambique | Displacement’ (*DTM*) <<https://displacement.iom.int/mozambique>> accessed 5 June 2022.

<sup>131</sup> *ibid.*

<sup>132</sup> ‘The International Organization for Migration March, 2022, Displacement Tracking Matrix’ (IOM Mozambique 2022) <<https://dtm.iom.int/reports/iom-mozambique-tropical-cyclone-gombe-flash-report-72hr-15-march-2022>>.

<sup>133</sup> Mugabe and others (n 130) 5.

<sup>134</sup> UNICEF (n 6) 2.

<sup>135</sup> ONU Habitat, ‘A dimensão territorial dos deslocamentos no norte de moçambique’ (ONU 2021) 2 <[https://unhabitat.org/sites/default/files/2021/05/un-habitat\\_positionpaper\\_mozambique\\_pt.pdf](https://unhabitat.org/sites/default/files/2021/05/un-habitat_positionpaper_mozambique_pt.pdf)>.

since the population of Metuge was previously around 86,000 and grew 137% at an enormous velocity.<sup>136</sup> Ibo, a modest coastal village, increased four times the previous population numbers due to the displacements.<sup>137</sup>

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<sup>136</sup> *ibid.*

<sup>137</sup> *ibid.*

## **Chapter 2: Internally displaced people's right to education**

Following the analysis of the right to education in general terms, remains important to verify if the IDCs, due to their characteristics, require a special and differentiated approach towards the realization of the right. Therefore, this chapter analyzes the specific justification of education for IDCs while covering challenges derived from the displacement. Finally, the need to adapt previously established concepts is tackled.

### **2.1 Justifying education for IDCs**

Regarding the justification of the right, an argument could be presented that the main target of governmental efforts should be the security, food and health, instead of their education. On this topic, the UNHCR develops the reasoning to elevate the importance of education to a major priority.<sup>138</sup> While acknowledging that education can be 'life-saving and life-sustaining', in cases of internal displacement it further helps 'individuals and communities to cope with the effects of displacement'.<sup>139</sup> Furthermore, it reduces the exposure to sexual violence, exploitation, forced recruitment and trafficking while improving the protection from landmines and sanitary or nutritive problems.<sup>140</sup> Aside from the security benefits, the UN Agency highlights the role of education as the 'basis for sustainable livelihoods' and successful reintegration in society.<sup>141</sup> Concerning psychological effects, education provides a stable and normal space that mitigates the impact of the displacement and contributes to peace, 'by promoting understanding and tolerance'.<sup>142</sup>

Bearing all this factors in mind, education must be a priority not only due to its intrinsic relevance, but also for its role in elevating other pivotal rights. Sharing a similar opinion, the IDMC argues that education 'has come to be seen as the "fourth pillar" of humanitarian assistance to victims of conflict, alongside nutrition, health, and shelter'.<sup>143</sup>

### **2.2 Specific challenges for IDCs right to education**

According to the UNHRC, the lack of infrastructure and educational facilities is a serious complication for IDCs education.<sup>144</sup> This factor usually results from the source of the displacement. Whether the forced movement was caused by conflict or natural disaster, the school buildings might be destroyed, inaccessible or simply used for other

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<sup>138</sup> Global Protection Cluster Working Group, 'Handbook for the Protection of Internally Displaced Persons' (UNHCR 2010) 282 <<https://www.unhcr.org/protection/idps/4c2355229/handbook-protection-internally-displaced-persons.html>> accessed 8 June 2022.

<sup>139</sup> *ibid.*

<sup>140</sup> *ibid.*

<sup>141</sup> Global Protection Cluster Working Group (n 139) 282.

<sup>142</sup> *ibid.*

<sup>143</sup> Internal Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council, 'Learning in Displacement: Briefing Paper on the Right to Education of Internally Displaced People' (2010) 5 <<https://www.internal-displacement.org/publications/learning-in-displacement-briefing-paper-on-the-right-to-education-of-internally>> accessed 8 June 2022.

<sup>144</sup> Global Protection Cluster Working Group (n 139) 283.

purposes.<sup>145</sup> Ellison further argues that Human resources are usually affected, ‘with teachers often being forced to flee’.<sup>146</sup>

In addition to that, displacement usually results in the loss of property due to the abandonment of valuable belongings. This phenomenon is deeply connected with poverty and impossibility to pay for school tuitions, books, and other educational expenses.<sup>147</sup> The lack of resources might even force children to disregard their education and contribute to the family’s economy. Displaced girls are particularly affected by the need to contribute for ‘domestic chores’.<sup>148</sup>

The third challenge is safety during and on the way to school. Mooney and Wyndham emphasize the possibility of a school being directly targeted by an armed attack or children being engaged on their way to the facilities with the purpose of ‘recruitment or abduction’.<sup>149</sup> The authors defend that sexual security is a concern for girls, considering the common inexistence of ‘separate lavatories’ or the presence of abusive teachers.<sup>150</sup> Naturally, these effects are more frequent in scenarios where the school facilities are not inside a displaced camp or settlement.<sup>151</sup>

Discrimination is equally challenging for the access to education in displacement. The different treatment can be motivated, by differences of gender, ethnicity or even language.<sup>152</sup> Analyzing the example of Georgia, Ellison defends that discrimination can even be present at the institutional level and lead to ‘segregated schools’ and impede integration.<sup>153</sup>

Furthermore, difficulties may arise due to lack of documentation. It is frequent that in the movement process, documentation might be destroyed, lost, confiscated or simply forgotten.<sup>154</sup> Evidently, it is challenging that most of the educational institutions require documents such as ‘birth certificate, documentation proving attendance at a prior educational institution, and records attesting to the level of studies completed’.<sup>155</sup> In the bureaucratic sphere, Mooney and French, highlight the residency requirements as a barrier difficult to surpass.<sup>156</sup>

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<sup>145</sup> *ibid.*

<sup>146</sup> Christine Smith Ellison (n 94) 15.

<sup>147</sup> *ibid.*

<sup>148</sup> ‘Handbook for the Protection of Internally Displaced Persons’ (n 130) 283;

<sup>149</sup> Erin Mooney and Jessica Wyndham, ‘Chapter 7 The Right to Education in Situations of Internal Displacement’ in Walter Kälin and others (eds), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, vol 41 (The American Society of International Law 2010) 259.

<sup>150</sup> *ibid.*

<sup>151</sup> Christine Smith Ellison (n 94) 15.

<sup>152</sup> Global Protection Cluster Working Group (n 139) 283.

<sup>153</sup> Christine Smith Ellison (n 94) 16.

<sup>154</sup> Mooney and Wyndham (n 150) 259.

<sup>155</sup> *ibid.*

<sup>156</sup> Erin Mooney and Colleen French, ‘BARRIERS AND BRIDGES: ACCESS TO EDUCATION FOR INTERNALLY DISPLACED CHILDREN’ [2005] The Brookings Institution-University of Bern.

### 2.3 Adapting of the education's general concepts to internal displacement

Being mindful of the constraints to IDP's right to education, and in conformity with the IDMC, Ellison argues that the concepts of Availability, Accessibility, Acceptability, Adaptability have particular importance in the context of IDPs.<sup>157</sup> Availability requires the necessity for free and compulsory primary education for displaced people 'regardless of whether they have found refuge in camps or elsewhere'.<sup>158</sup> Moreover, schools should be economically accessible and possess quality infrastructures and trained professionals. During internal displacement, accessibility must be adapted to include schools protected from attacks.<sup>159</sup> Additionally, the schools must be in a safe distance from the settlement, to allow walking to the location safely (otherwise safe public transportation must be guaranteed).<sup>160</sup>

Acceptability requires quality in the content and form of the education while being culturally and linguistic appropriate.<sup>161</sup> Naturally, the culture and language are specifically important in situations of 'displaced children from minority backgrounds, who may find themselves in areas dominated by different ethnic groups'.<sup>162</sup>

Finally, adaptability implies that education 'should be flexible and take into account the best interest of the child'.<sup>163</sup> In spite of having to be evaluated in the concrete situation, education should be able to help adapting to the displacement circumstances and facilitate the re-introduction of the child in the 'regular educational structures'.<sup>164</sup>

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<sup>157</sup> Christine Smith Ellison (n 94) 13; Internal Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council (n 144) 5.

<sup>158</sup> Internal Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council (n 144) 5.

<sup>159</sup> *ibid.*

<sup>160</sup> *ibid.*

<sup>161</sup> *ibid.*

<sup>162</sup> *ibid.* 6.

<sup>163</sup> *ibid.*

<sup>164</sup> Christine Smith Ellison (n 94) 14; Internal Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council (n 144) 6.

### **Chapter 3: International, Regional and National standards on the right to education**

The right to education is protected in multiple international and regional human rights documents. Therefore, the legal analysis is crucial to verify the extent of Mozambique's obligations towards the right to education in the legal international sphere. Following the examination of international and regional documents, the Mozambican domestic standards will be focused.

#### **3.1 International Standards:**

The International human rights law has rapidly developed after the second world war and is now a complex system composed by multiple standards. Within the vast selection of documents addressing the right to education, either in general or for specific groups, some are soft law and others are legally binding.

##### **3.1.1 Universal Declaration of HR (1948)**

The right to education was firstly recognized in international law through the UDHR, a pioneer document in the establishment of international responsibility to protect the right.<sup>165</sup>

Article 26 establishes that everyone has the right to education, while affirming the necessity for free and compulsory elementary education.<sup>166</sup> Moreover, technical and professional education should be available, and higher education, despite being based on the merits, should be accessible.

The second paragraph sets that education should aim at 'full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms' while pursuing peace and tolerance.<sup>167</sup> Finally, paragraph 3 affirms the rights of the parents in their child's education.

Notwithstanding the nature of the document as soft law, the UDHR was pivotal in starting the development of the right in the international standards. Furthermore, the provisions present in the document were later adapted and transformed into legally binding obligations through the ICESCR and other documents.<sup>168</sup> Finally, many of UDHR's 'provisions also have become incorporated into customary international law' and consequently bind the states.<sup>169</sup>

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<sup>165</sup> Delbrück (n 67) 96.

<sup>166</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 26.

<sup>167</sup> UDHR (n 167) art 26.

<sup>168</sup> Delbrück (n 67) 97.

<sup>169</sup> Hurst Hannum, 'The UDHR in National and International Law' (1998) 3 HEALTH AND HUMAN RIGHTS 144, 145.

### 3.1.2 Guiding principles of Internal Displacement (1998)

During the cold war, the increase of IDPs was accentuated and the necessity to create a document to protect IDPs as a vulnerable group led to the Guiding Principles.<sup>170</sup> According to Cohen there were three main reasons for the form of the document.<sup>171</sup> First, the states would not support a convention due to the interference of the principle of sovereignty.<sup>172</sup> Second, the necessity for a document was urgent and creating a convention would have been a long process.<sup>173</sup> Finally, Cohen argues that ‘sufficient international law applicable to internally displaced children already existed’ and therefore the need was only to agglutinate the existing material.<sup>174</sup>

In this light, the principles were constituted without being a ‘draft declaration on the rights of internally displaced persons nor do they constitute, as such, a binding instrument’.<sup>175</sup> Moreover, according to Kälin, the principles ‘aim to provide practical guidance to all those dealing with internally displaced persons’.<sup>176</sup>

Principle 23 focus on education, and paragraph 1 establishes that education is a universal right. The following paragraph ‘addresses the means of implementation’ and highlights the necessity for free and compulsory primary education.<sup>177</sup> Mooney and Wyndham highlight that education in principle 23 is inclusive of non-formal education.<sup>178</sup> Furthermore, the principle demonstrates a special concern with displaced girls and the necessity to establish equality in access to education. Additionally, education should respect cultural identity, religion, and language.<sup>179</sup>

Finally, principle 4 prohibits discrimination of any sort while further requiring states to assist and protect children considering ‘their condition’ and special needs.<sup>180</sup>

Regarding the obligations for the State of Mozambique, similarly to the UDHR, the guiding principles are not legally binding. However, the standards present in the document should serve as a practical and legal tool for states to assist IDCs and interpret

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<sup>170</sup> Roberta Cohen, ‘The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting’ (2004) 10 *Global Governance* 459, 461.

<sup>171</sup> *ibid* 464.

<sup>172</sup> *ibid*.

<sup>173</sup> *ibid*.

<sup>174</sup> *ibid*.

<sup>175</sup> Walter Kälin, ‘The Guiding Principles on Internal Displacement — Introduction’ (1998) 10 *International journal of refugee law* 557, 562.

<sup>176</sup> *ibid*; Walter Kälin, ‘The Guiding Principles on Internal Displacement as International Minimum Standard and Protection Tool’ (2005) 24 *Refugee survey quarterly* 27, 27.

<sup>177</sup> Walter Kälin, ‘Guiding Principles on Internal Displacement - Annotations’ (2008) 38 *Studies in Transnational Legal Policy* 108.

<sup>178</sup> Mooney and Wyndham (n 150) 248.

<sup>179</sup> *Guiding Principles on Internal Displacement* (n 92) principle 23.

<sup>180</sup> *ibid* 4.

binding documents. Furthermore, the UN document was fundamental to the development of the first regional legally binding document to protect IDPs, the Kampala Convention.

### 3.1.3 Convention on the Rights of the Child (1989)

The CRC is the most ratified convention in the United Nations framework.<sup>181</sup> Mozambique ratified the convention in 1994 and has adhered to the optional protocol on armed conflict and the protocol on sale of children, child prostitution and child pornography. Although, the optional protocol on individual complaints did not receive equal treatment.

The analysis of the education provisions present in the convention must be considered in the wider context of the document, without forgetting its core principles. The right to education is established in articles 28 and 29 of the Convention, two distinct provisions with a ‘symbiotic relationship’.<sup>182</sup> Article 28 focuses on the access to education and leaves the aim of education, ‘but also the purpose, content, and quality’ to be addressed in article 29.<sup>183</sup>

#### The right in the convention

To understand the state’s responsibilities in providing access to education, by analyzing article 28, one must start by defining the right to education in the context of the convention.

Bueren defends a restrictive approach on education, arguing that when education is referred to in international instruments, the interpretation should be the formal ‘types of instruction given in institutions’.<sup>184</sup> The author argues that most of the provisions in the convention against discrimination in education ‘are limited to educational institutions and schooling’ but also the formal view is supported by case law.<sup>185</sup> With an antagonist perspective, Tobin and Curtis support the inclusion of informal education in the concept of article 28. In their view, ‘formal education clearly falls within the definition of education but does not exhaust it’.<sup>186</sup> In accordance with the broader interpretation, the CRC Committee, establishing the aims of education, defined that education ‘goes far

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<sup>181</sup> ‘- OHCHR Dashboard’ (*United Nations Human Rights Office of the High Commissioner*) <<https://indicators.ohchr.org/>> accessed 20 June 2022.

<sup>182</sup> Christian Curtis and John Tobin, ‘The Right to Education’, *Oxford Public International Law* (Oxford University Press 2019) 1059.

<sup>183</sup> Laura Lundy and John Tobin, ‘The Aims of Education’, *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019) 1117.

<sup>184</sup> Geraldine Van Bueren, ‘The Right of the Child to Education’, *The International Law on the Rights of the Child*, vol 35 (Brill 1995) 233.

<sup>185</sup> *ibid* 256.

<sup>186</sup> Curtis and Tobin (n 183) 1063.

beyond formal schooling'.<sup>187</sup> Similarly, UNICEF considers that the convention's definition 'is not limited to instruction delivered within schools, and there is increasing recognition of the value of informal education'.<sup>188</sup>

Considering the valid arguments on both sides, one must include informal education in the scope of article 28. On one hand, it is undeniable that informal methods of education have a pivotal impact in the development of skills and help realize the full potential of a child. On the other, it is the clear position of the Committee on the specific case of Mozambique in which was recommended 'the use of non-formal education structures, such as community schools, servicing children who are unable to return to their regular schools'.<sup>189</sup>

Article 28 must be interpreted in accordance with the four elements introduced by Tomaševski, in accordance with the adaptation provided in section 2.3 of this research. Despite their inclusion on the general comment of another treaty body (CESCR), the CRC Committee has considered this doctrine in their reports.<sup>190</sup>

### **State obligations in article 28**

It is generally accepted that States have a 'tripartite typology of obligations'.<sup>191</sup> Firstly, the States have the obligation to respect the right to education, and consequently should avoid interfering in the enjoyment of a child's right.<sup>192</sup> In this light, Mozambique must avoid any interference with the IDCs' right to education unless the restriction has a legitimate aim and is according to the test of proportionality.<sup>193</sup>

Second, the states have the obligation to protect the right to education from a third-party interference.<sup>194</sup> Therefore, Mozambique must protect the enjoyment of the IDCs' right from non-state actor's interference, namely, from the armed group attacks.

Thirdly, States are obliged to fulfil the right to education, and obligation that requires multiple positive actions. Considering this obligation, the concepts of progressive realization, non-discrimination, and appropriate measures are pivotal.

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<sup>187</sup> UNCRC 'General comment No. 1 (2001), Article 29 (1), The aims of education' (2001) CRC/GC/2001/1

<sup>188</sup> Rachel Hodgkin, Peter Newell and UNICEF, *Implementation Handbook for the Convention on the Rights of the Child* / (UNICEF, 2007) 411 <<https://digitallibrary.un.org/record/620060>> accessed 10 June 2022.

<sup>189</sup> UNCRC 'Concluding observations of the Committee on the Rights of the Child: Mozambique' (2002) CRC/C/15/Add.172

<sup>190</sup> Curtis and Tobin (n 183) 1067.

<sup>191</sup> *ibid* 1071.

<sup>192</sup> *ibid*.

<sup>193</sup> *ibid* 1072.

<sup>194</sup> *ibid* 1072.

Article 4 defines that for economic, social and cultural rights ‘States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation’.<sup>195</sup> Despite this reality, Lansdown and Vaghri highlight that article 28 is ‘subject to progressive realization’.<sup>196</sup> That element does not allow ‘indefinite deferral of action by a State Party’, and on the contrary requires states to undertake immediate measures and demonstrate the use of their full capacity to fulfil the right.<sup>197</sup> The Committee goes as far as analyzing the percentage of GDP invested in education and criticizing negative practices from the States.<sup>198</sup> The progressive realization further underlines a ‘prohibition against deliberately retrogressive measures’.<sup>199</sup>

The Committee on ESCR has established, according to Tobin and Courtis, an undesirably extensive list of core obligations not subjected to the principle of progressive realization.<sup>200</sup> Despite the silence of the CRC body, one must agree with the authors’ idea that an extensive list ‘frustrates the main purpose’ of minimum core obligations.<sup>201</sup> Not only becomes ineffective in prioritizing efforts, but also becomes unachievable.<sup>202</sup> The authors further argue that a reasonable core minimum of the right to education in the CRC would include non-discrimination, non-interference by non-state actors and free primary school education.<sup>203</sup>

The CRC provision also obliges states to ensure the right to education based on equal opportunity.<sup>204</sup> This element must be aligned with the principle of non-discrimination in article 2 of the Convention.<sup>205</sup> Consequently, discrimination is forbidden, and the concept of substantive equality obtains relevance. To Tobin and Courtis, this obligation ‘not only permits but requires the adoptions of special measures directed at especially vulnerable groups of children’.<sup>206</sup> The special care required by some groups has been firmly affirmed by the CRC Committee and has demonstrated that internally displaced children are included in these concerns. An excellent example of this position is the special recommendation for Sudan to focus on ‘ensuring that primary and secondary education is available for all children in IDP camps in Darfur’.<sup>207</sup> In order to comply with the

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<sup>195</sup> Convention on the Rights of the Child (n43) art 4.

<sup>196</sup> Gerison Lansdown and Ziba Vaghri, ‘Article 28: The Right to Education’ in Ziba Vaghri and others (eds), *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Springer International Publishing 2022) 248 <[https://doi.org/10.1007/978-3-030-84647-3\\_26](https://doi.org/10.1007/978-3-030-84647-3_26)> accessed 10 June 2022.

<sup>197</sup> Courtis and Tobin (n 183) 1072.

<sup>198</sup> Hodgkin, Newell and UNICEF (n 189) 412.

<sup>199</sup> Courtis and Tobin (n 183) 1073.

<sup>200</sup> *ibid* 1076.

<sup>201</sup> *ibid* 1076.

<sup>202</sup> *ibid* 1076.

<sup>203</sup> *ibid* 1076.

<sup>204</sup> Lansdown and Vaghri (n 178) 253.

<sup>205</sup> *ibid* 253.

<sup>206</sup> Courtis and Tobin (n 183) 1077.

<sup>207</sup> UNCRC ‘Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : concluding observations : Sudan’ (2010) CRC/C/SDN/CO/3-4

obligations, the Parties to the convention must collect data and monitor several key agents to identify patterns of discrimination.<sup>208</sup>

In this context, Mozambique shall abstain from discrimination while observing the concept of substantive equality to develop a level playing field for the IDCs. That implies taking ‘all necessary measures to ensure that the right to education is fully implemented ... and internally displaced children, fully enjoy their right to education.’<sup>209</sup>

Considering the exposed, and agreeing with Tobin and Curtis’ argument, for a measure to be appropriate, consistency and effectiveness are demanded in the realization of the right to education.<sup>210</sup> In order to be consistent with the convention, the measures must respect the core principles of the document. Therefore, must be non-discriminatory (article 2), in conformity with the child’s best interest (article 3), respect their right to development and survival (article 6), and observe the child’s right to express their views (article 12).<sup>211</sup> To reach effectiveness, the Committee suggests the formulation of a national policy, despite the inexistence of an express obligation.<sup>212</sup> In addition to that, the policy should be implemented and monitored with the collection of appropriate data.<sup>213</sup>

### **Specific obligations towards distinct levels of education**

Article 28 distinguishes various levels of education, and naturally, different levels of protection. The implementation of primary education is the highest and most onerous standard since it must be free and compulsory for all. According to UNESCO’s International Standard Classification of Education (ISCED), primary education is the level ‘designed to provide students with fundamental skills in reading, writing and mathematics’ usually starting between the 5 and 7 years of age.<sup>214</sup> The necessity for the free and compulsory elements derives from the recognition that primary education is essential ‘for the development of the child and their effective functioning in society’.<sup>215</sup>

However, the question remains if the free nature of primary education is subjected to the principle of progressive realization. The Committee on ESCR has established that ‘the obligation to provide primary education for all is an immediate duty of all States parties’.<sup>216</sup> In the absence of a clear position by the CRC Committee, Tobin and Curtis

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<sup>208</sup> Curtis and Tobin (n 183) para 1077.

<sup>209</sup> UNCRC ‘Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : concluding observations : Republic of Serbia’ (2008) CRC/C/SRB/CO/1

<sup>210</sup> Curtis and Tobin (n 183) 1081.

<sup>211</sup> *ibid.*

<sup>212</sup> *ibid* 1082.

<sup>213</sup> *ibid* 1082.

<sup>214</sup> ‘International Standard Classification of Education (ISCED)’ (UNESCO Institute for Statistics 2012) 30 <<http://uis.unesco.org/en/topic/international-standard-classification-education-isced>> accessed 10 June 2022.

<sup>215</sup> Lansdown and Vaghri (n 197) 252.

<sup>216</sup> CESCR ‘General Comment No. 13: The Right to Education (Art. 13)’ (n 84).

argue that primary education is subject to the 'availability of resources'.<sup>217</sup> Despite this practical view, achieving free and compulsory education must be an absolute priority and the 'margin of maneuver' is reduced.<sup>218</sup> Nonetheless, the Committee has demonstrated a persistent behavior of demanding States to provide for free education and being severely critical of indirect costs including transports, uniforms, meals, materials, among others.<sup>219</sup> Taking into consideration that primary free and compulsory education is pivotal for the child's development and features the right to education's core minimum, the obligation should be immediate and the position of the Committee on ESCR should be adopted. Therefore, the Mozambique must ensure immediately free and compulsory primary education for all IDCs and shall abstain for associating the primary level of education with indirect costs.

Secondary education is divided in 4 categories, in accordance with UNESCO's International Standard Classification of Education. Lower general secondary education, lower vocational secondary education, upper general secondary education and upper vocational secondary education.<sup>220</sup> Lower secondary education's aim is 'to lay the foundation for lifelong learning and human development upon which education systems may then expand further educational opportunities' with children 'typically between ages 10 and 13'.<sup>221</sup> Upper secondary education is 'designed to complete secondary education in preparation for tertiary education or provide skills relevant to employment' and is frequented by children 'typically between ages 14 and 16'.<sup>222</sup> The vocational education is defined by UNESCO as:

technical and vocational education' refers to all forms and levels of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes and understanding relating to occupations in the various sectors of economic and social life.<sup>223</sup>

State's obligations regarding secondary education, without distinction between the four levels, are the progressive availability and accessibility to every child. In this light, the State of Mozambique is required to progressively guarantee the availability and the physical and economic accessibility of secondary education for IDCs. The state shall take all the appropriate measures to the maximum extent of the resources to achieve that goal.<sup>224</sup> The CRC does not include an obligation to provide free secondary education at any point, revealing a weaker obligation than the ICESCR's norm.<sup>225</sup>

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<sup>217</sup> Courtis and Tobin (n 183) 1089.

<sup>218</sup> *ibid.*

<sup>219</sup> *ibid* 1092.

<sup>220</sup> ISCED (n 217).

<sup>221</sup> *ibid* 33.

<sup>222</sup> *ibid* 38.

<sup>223</sup> UN Educational, Scientific and Cultural Organisation (UNESCO), 'Convention on Technical and Vocational Education' (adopted in 10 November 1989, entered in force 29 August 1991) art 1.

<sup>224</sup> Courtis and Tobin (n 183) 1098; Lansdown and Vaghri (n 197) 252.

<sup>225</sup> Courtis and Tobin (n 183) 1098.

Finally, higher, or tertiary education consist in:

learning activities in specialized fields of education. It aims at learning at a high level of complexity and specialization. Tertiary education includes what is commonly understood as academic education but also includes advanced vocational or professional education.<sup>226</sup>

Article 28 establishes that higher education should be accessible to all, in conformity with the principle of non-discrimination.<sup>227</sup> Mozambique's obligations towards this educative level, include positive actions, using all appropriate means to effectively secure the access to higher education based on capacity. However, substantive equality must be observed to generate opportunities for the IDCs.

### **Specific obligations:**

Article 28 obliges the states to encourage school attendance and diminish drop-out rates.<sup>228</sup> It is a mere obligation of encouragement, and the state maintains a wide discretion.<sup>229</sup> Regardless, Mozambique should undertake all appropriate measures towards increasing attendance and those must be consistent with the convention and effective in achieving the proposed results.<sup>230</sup>

The realized paragraph of Article 28 is a legislative innovation by prohibiting any school discipline that violates the child's dignity or is not consistent with the convention.<sup>231</sup> Therefore, Mozambique has the onerous obligation to ensure that no practices occur on the grounds of discrimination, violate the best interest of the child, its development and survival and the right to be heard.<sup>232</sup> This means that corporal punishment can never be justified, and punishments that 'humiliate, denigrate, frighten or ridicule' the child must be inexistent.<sup>233</sup> The state's obligation is immediate and there is no 'discretion to undertake such measures progressively'.<sup>234</sup>

Finally, paragraph 3 addresses the international cooperation regarding education. This norm has a relation of specialty with article 4, that tackles international cooperation on

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<sup>226</sup> 'International Standard Classification of Education (ISCED)' (n 215) 46.

<sup>227</sup> Courtis and Tobin (n 183) 1100.

<sup>228</sup> *ibid* 1103.

<sup>229</sup> *ibid* 1103.

<sup>230</sup> *ibid*.

<sup>231</sup> Lansdown and Vaghri (n 197) 254.

<sup>232</sup> *ibid*.

<sup>233</sup> *ibid* 255.

<sup>234</sup> Courtis and Tobin (n 183) para 1109.

general terms. There is no obligation to assist but simply to promote and encourage cooperation.<sup>235</sup>

Tobin and Curtis argue the existence of an obligation to respect, protect and fulfill in the international context ‘to the extent that is reasonably practicable’.<sup>236</sup> That would mean states shall refrain from undermining the enjoyment of the right in another state, should prevent non-state actors’ interference and should assist to realize the right directly or indirectly in another state.<sup>237</sup> The emphasis on developing countries exists to ensure the international cooperation is developed in a conscient manner, considering the social and cultural context of these nations. The CRC Committee highlights that ‘States that lack the resources needed to implement the rights enshrined in the Convention and its Optional Protocols are obliged to seek international cooperation’.<sup>238</sup> Consequently, Mozambique must require international assistance to ensure the IDCs’ right to education.

Article 29 of the convention regulates the content and nature of the right, and requires the States to ‘take all appropriate measures within the scope of their available resources to ensure that the education provided to children under article 28 is directed to the aims under article 29’.<sup>239</sup> The significant resource implications require the obligations under article 29 to be ‘subject to progressive realization’.<sup>240</sup> Therefore, States must take all reasonable steps according to the available resources to realize the right to education in accordance with the aims in the provision.<sup>241</sup>

In this light, article 29 demands that education must be ‘directed to the development of the child’s personality, talents, and mental and physical abilities to their fullest potential’.<sup>242</sup> Moreover, the education shall be targeted to respect human rights and the principles included in the UN Charter.<sup>243</sup> Regardless, the respect for the child’s parents and the child’s own values, language and culture shall be present in the established education. Addressing the right to education as an empowerment right, the aim of education must be directed for a responsible life in society while educating for peace, tolerance, and diversity.<sup>244</sup> Finally, it includes a pioneer provision by considering that education should aim to the respect of the natural environment.<sup>245</sup>

The second paragraph of article 29, sets an obligation of non-interference in the individuals liberty to establish educational institutions. Although, the convention also

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<sup>235</sup> Lansdown and Vaghri (n 197) 255.

<sup>236</sup> Curtis and Tobin (n 183) 1112.

<sup>237</sup> *ibid.*

<sup>238</sup> UNCRC ‘General comment No. 19 (2016) on public budgeting for the realization of children’s rights (art. 4)’ (2016) CRC/C/GC/19

<sup>239</sup> Lundy and Tobin (n 184) para 1124.

<sup>240</sup> *ibid.*

<sup>241</sup> Gerison Lansdown, Ziba Vaghri and Katherine Covell, ‘Article 29: The Aims of Education’ in Ziba Vaghri and others (eds), *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Springer International Publishing 2022) 263.

<sup>242</sup> Lundy and Tobin (n 184) para 1127.

<sup>243</sup> *ibid* 1132.

<sup>244</sup> *ibid* 1142.

<sup>245</sup> *ibid* 1146.

limits the liberty since private education must be consistent with the CRC and must comply with the specific states' standards.<sup>246</sup>

### **3.1.4 UNESCO's Convention against discrimination in education (1960)**

The Convention against discrimination in education is the 'first legally binding international instrument which is entirely dedicated to the right to education'.<sup>247</sup> The convention mainly focuses on prohibiting discrimination in education. Article 1 defines discrimination as:

any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education.<sup>248</sup>

The convention points highlight examples of discrimination and regulates the obligations of the states to avoid it in education (article 3). The document re-affirms the necessity for free and compulsory primary education. Moreover, in accordance with the CRC, secondary education should be made accessible and available while higher education should be accessible to all based on capacity. Protection of minorities is a focus of the convention through article 5.<sup>249</sup>

Bearing these factors in mind, Mozambique has not ratified UNESCO's convention. Consequently, no obligations emerge from its provisions. In spite of that, one must highlight that non-discrimination clauses are included in most human rights standards that protect education, not only in the international legal framework, but also in the African regional system.

### **3.1.5 International Covenant on Economic, Social and Cultural Rights (1966)**

The International Covenant that concretized the legally binding force of the UDHR, is an important landmark for the right to education. The right is regulated in Articles 13 and

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<sup>246</sup> *ibid* 1148.

<sup>247</sup> 'What You Need to Know about the Convention against Discrimination in Education' (*UNESCO*, 30 November 2020) <<https://en.unesco.org/news/what-you-need-know-about-convention-against-discrimination-education>> accessed 13 June 2022.

<sup>248</sup> UN Educational, Scientific and Cultural Organisation (UNESCO), 'Convention Against Discrimination in Education' (adopted in 14 December 1960, entered into force 22 May 1962) art 1.

<sup>249</sup> Convention Against Discrimination in Education (n 249) art 3-5.

14. According to Tobin and Courtis, article 28 of the CRC is based on the Covenant's provisions.<sup>250</sup> However, there are some key differences. Article 13 requires states to develop secondary education while the CRC's norm only obliges states to take measures to encourage that development.<sup>251</sup> Additionally, Article 13 demands states to progressively introduce free higher education whereas the CRC simply requires all appropriate means to achieve the element of accessibility.<sup>252</sup> Finally, the Covenant 'includes a general right to fundamental education'.<sup>253</sup>

The Instrument is a groundbreaking achievement in the protection of the right to education and the work of the Committee on ESCR is undisputable. Regardless, no State obligations result from the Covenant for the State of Mozambique since the treaty was not ratified by the African State.

### **3.1.6 Convention on the Elimination of All Forms of Discrimination against Women (1979)**

CEDAW is a pivotal woman's rights standard that aims to ensure equality between women and men, in the legal framework but also in practice.<sup>254</sup> Graterol and Gupta argue that 'one of the most important features of CEDAW is that it binds the principle of non-discrimination to the principles of substantive equality and State obligation'.<sup>255</sup>

Regarding the State obligations that emerge from the ratification of CEDAW, it is important to highlight that the elements of accessibility, adaptability, availability and acceptability must be considered to the specificity of the female children. In this context, one must not forget the challenges faced by women in society and in accessing education.<sup>256</sup>

The general provisions (1 to 5) in the Convention are essential for the interpretation of the State obligations regarding the right to education. Article 1 defines discrimination against female individuals as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and

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<sup>250</sup> Courtis and Tobin (n 183) para 1059.

<sup>251</sup> *ibid.*

<sup>252</sup> *ibid.*

<sup>253</sup> *ibid* 1059.

<sup>254</sup> Maria Hermina Graterol and Anurag Gupta, 'Girls Learn Everything: Realizing the Right to Education through CEDAW' (2010) 16 *New England Journal of International and Comparative Law* 49, 50.

<sup>255</sup> *ibid.*

<sup>256</sup> *ibid* 67.

women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>257</sup>

Article 2 establishes a general obligation to condemn discrimination and take all appropriate measures towards ‘eliminating discrimination against women’ and demonstrates some practical examples.<sup>258</sup> The third provision introduces the obligation to ensure the ‘full development and advancement of women’ and the enjoyment of human rights in a situation of equality with men.<sup>259</sup> The following article affirms that all the special measures to ensure equality must be abandoned if equality is achieved, a demonstration that *de facto* equality is a priority but must not be used to create unfair advantages.<sup>260</sup> Finally, article 5 reveals a necessity for structural change, including the modification of ‘socio-cultural patterns and stereotypes’ that affects girl’s enjoyment of the right to education.<sup>261</sup>

According to the CEDAW Committee, the analysis of the general framework (article 1 to 5 and article 24) demonstrates that ‘three obligations are central to States parties’ efforts to eliminate discrimination against women’.<sup>262</sup> First, States must ensure the inexistence of legal direct or indirect discrimination and that women are protected from discrimination from public authorities and in the private sphere.<sup>263</sup> Secondly, States are obliged ‘to improve the de facto position of women through concrete and effective policies and programmes’.<sup>264</sup> Thirdly, ‘prevailing gender relations and the persistence of gender-based stereotypes’ in the legislation but also in institutions must be addressed by the States.<sup>265</sup>

Article 10 establishes a specific provision to undertake all appropriate measures to eliminate discrimination in the right to education. To interpret the concept of appropriate, the CEDAW Committee has permitted a wide discretion to the states that are not free from having to justify their measures as appropriate.<sup>266</sup> The interpretation of article 10 is highly influenced by the concept of substantive equality. In this department, the Committee has highlighted that substantive equality ‘requires that women be given an

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<sup>257</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW) art 1.

<sup>258</sup> CEDAW (n 258) art 2.

<sup>259</sup> CEDAW (n 258) art 3.

<sup>260</sup> CEDAW (n 258) art 4.

<sup>261</sup> Graterol and Gupta (n 255) 67.

<sup>262</sup> UN Committee for the Elimination of All Forms of Discrimination against Women ‘General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures’ (2004) para 6.

<sup>263</sup> *Ibid* para 7.

<sup>264</sup> *Ibid*.

<sup>265</sup> *Ibid*.

<sup>266</sup> Fareda Banda, ‘Article 10’ in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women : A Commentary* (OUP Oxford 2012) 259.

equal start and that they be empowered by an enabling environment to achieve equality of results'.<sup>267</sup>

The first specific provision in the Article 10 demands equality in the conditions 'for career and vocational guidance, for access to studies and for the achievement of diplomas' without distinguishing levels of education.<sup>268</sup> Banda argues that equal access to studies demands 'States parties to remove discriminatory policies, legal, physical, socio-economic, or cultural barriers that impede women and girls from accessing education'<sup>269</sup> Article 10(b) focus on the necessity to implement equality in the quality of education while Article 10(c) re-affirms the obligation to eliminate 'stereotyped concept of the roles of men and women at all levels and in all forms of education'.<sup>270</sup> Within this framework, the Committee has considered that practices promoting gender-stereotypes are not permitted, including subjects with a female focus.<sup>271</sup>

The following paragraphs of the article focus on the equal access to scholarships and financial help, equal participation in physical education and equal access to 'programmes of continuing education'.<sup>272</sup> Additionally, is established the obligation to ensure the reduction of female drop-outs and mechanisms to further educate women that prematurely abandoned their education. This provision demonstrates the concern with the present discrepancy between male and female literacy, a global factor also verified in Mozambique.<sup>273</sup> Finally, States must guarantee 'access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning'.<sup>274</sup>

Bearing all this factors in mind, the Mozambican State must respect, protect, and fulfil the equality in recognition, enjoyment and exercise of the right to education for IDGs. To achieve this, a legal non-discriminatory framework must be ensured and protection from discrimination by public or private entities guaranteed. Furthermore, effective policies must be implemented, considering the concept of substantive equality and the necessity for equal results. Moreover, Mozambique must address and prevent the impact of gender relations and stereotypes in the equality of recognition, enjoyment, and exercise of the right to education for IDGs. In particular, State authorities should take all appropriate measures to eliminate these social factors in the educative environment, through adaptation of textbooks, teaching methods and school programs. The African state must act to ensure the decrease of IDGs drop-out rate and guarantee quality in education while

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<sup>267</sup> UN Committee for the Elimination of All Forms of Discrimination against (n249) para 8.

<sup>268</sup> *ibid.*

<sup>269</sup> Banda (n 267) 261.

<sup>270</sup> CEDAW (n 258) art 10.

<sup>271</sup> Banda (n 267) 264.

<sup>272</sup> CEDAW (n 258) art 10.

<sup>273</sup> 'Literacy Rate, Adult Female (% of Females Ages 15 and above) - Mozambique | Data'

<<https://data.worldbank.org/indicator/SE.ADT.LITR.FE.ZS?locations=MZ>> accessed 20 June 2022.

<sup>274</sup> *Ibid.*

providing, vocational and family planning guidance. Finally, the state shall organize programs for IDGs that abandoned the school prematurely.

### **3.1.7 Other International Treaties:**

The international legal framework further protects the right to education in a multiplicity of scenarios that will not be addressed in this research project. The Convention on the Rights of Persons with Disabilities from 2006 or the Convention on the Elimination of All Forms of Racial Discrimination (1966) are two examples of the right to education protected in different contexts. One is specialized in the specificities of persons with disabilities and the other, focus on tackling racial discrimination.

Furthermore, International Humanitarian Law protects the right to education for civilians in situations of conflict, particularly in articles 24 and 50 of the IV Geneva Convention.<sup>275</sup> Considering the Mozambican reality, this standard might be applied to the IDCs whose displacement cause was the armed conflict in the northern region of the country. However, this research project will focus on the international human rights standards and dismiss the analysis of the Geneva conventions' standards in dept.

## **3.2 Regional Standards**

Mozambique is an African State, member of the African Union and has ratified several African human rights documents regulating the right to education.

### **3.2.1 African Charter on Human and People's Rights (1981)**

The African Charter, ratified by Mozambique in 1989, presents a general provision on education establishing that every individual shall have the right to education (Article 17).<sup>276</sup> Despite the simplicity of the legal solution, the Commission on Human and People's Rights has provided more insight regarding State obligations towards the right to education.<sup>277</sup>

Firstly, establishes that free and compulsory primary education are minimum core obligations, and the charter requires that 'special measures may be required to ensure that children belonging to disadvantaged or vulnerable groups receive free primary

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<sup>275</sup> International Committee of the Red Cross (ICRC) 'Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)' (adopted in 12 August 1949; entered into force 21 October 1950) 75 UNTS 287

<sup>276</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter)

<sup>277</sup> African Commission on Human and People's Rights, 'Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights'.

education'.<sup>278</sup> To achieve free primary education the States must implement policies to reduce the costs of attending school, including uniforms, transportation, meals and textbooks.<sup>279</sup> In this light, Mozambique has to ensure immediately that free and compulsory primary education is accessible physically and economically for all IDCs.

Secondary education must be made 'generally available and accessible to all by all appropriate means, and in particular by the progressive introduction of free education'.<sup>280</sup> The secondary level of education should be available to all on the same basis while higher education must be made 'available and accessible to all, on the basis of capacity, by all appropriate means'.<sup>281</sup> Therefore the state of Mozambique is obliged to take all appropriate measures to progressively make secondary and higher education available and accessible for IDCs.

Regarding the aims of education, the Commission highlights the necessity to ensure the promotion 'of the child's personality, talents and mental and physical abilities to their fullest potential, without discrimination'.<sup>282</sup> Moreover, education must respect human rights and fundamental freedoms while preserving African values, culture and morals.<sup>283</sup> Education must promote peace, tolerance, respect for the environment and natural resources while leading to understanding about primary health care.<sup>284</sup> In accordance with article 25 of the Charter, Murray argues that human rights education must be inserted in all levels of education.<sup>285</sup>

The African body emphasizes the necessity to guarantee equal access and progress of vulnerable children to the educative system, namely the girl-child, by tackling the 'social, economic and cultural barriers that impede girl children's equal enjoyment of the right to education'.<sup>286</sup> To achieve that, states are required to take measures towards eradicating sexual violence and guaranteeing sanitary conditions. Additionally, corporal punishment must be abolished and special psychological education for vulnerable children must be provided.<sup>287</sup> According to Murray, States must observe the conditions of the teaching staff including the work conditions, their salaries, career opportunities and security as a relevant element to ensure access to education.<sup>288</sup>

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<sup>278</sup> *ibid* para 71.

<sup>279</sup> *ibid*.

<sup>280</sup> *ibid*.

<sup>281</sup> *ibid*.

<sup>282</sup> *ibid*

<sup>283</sup> *ibid*.

<sup>284</sup> *ibid*.

<sup>285</sup> Rachel Murray, 'Article 25: HR Teaching, Education and Publication', *The African Charter on Human and Peoples' Rights: A Commentary* (University Press, Incorporated 2019) para 559.

<sup>286</sup> African Commission on Human and People's Rights (n 278) para 71.

<sup>287</sup> Murray (n 286) para 559; Rachel Murray, 'Article 17: Right to Education, Cultural Life and the Promotion of Morals and Traditional Values', *The African Charter on Human and Peoples' Rights: A Commentary* (University Press, Incorporated 2019) para 445.

<sup>288</sup> Murray (n 288) para 442.

### **3.2.2 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)**

The Maputo Protocol, ratified by Mozambique in 2005, was a landmark regarding women's rights in the African continent namely for reproductive rights and violence against women.<sup>289</sup> Article 12 of the protocol protects the women's right to education.<sup>290</sup> Focusing on eliminating discrimination towards equal opportunity and access to education for females, the protocol requires the 'elimination of stereotypes in textbooks, the curricula and the media'.<sup>291</sup> Sexual abuse and protection to the victims are specifically regulated. Moreover, an emphasis is given to human rights education and promoting female literacy while focusing on retaining girls and women in school.

Considering the provisions, the Mozambican state is required to take all appropriate measures to eliminate gender discrimination in the access of education for IDGs. Furthermore, the state must act to protect IDGs from sexual abuse while providing proper counselling to the victims. Towards the retainment in education and increasing IDGs literacy rates, the state must act appropriately, including through the organization of programs for girls who abandoned school prematurely. Finally, education institutions must include gender sensitization and human rights in the curriculum.

### **3.2.3 African Charter on the Rights and Welfare of the Child (1990)**

The African Convention was developed in the sequence of the CRC's introduction in the UN human rights framework. Adopted in 1990, the Convention is often considered an African adaptation of the international standard. According to Peter and Mwalimu, 'Africa was under-represented during the drafting process of United Nations Convention' with Algeria, Morocco, Senegal and Egypt as the only States with a relevant participation in the draft.<sup>292</sup> Moreover, the authors consider the international standard to be insufficient in addressing determined realities of the African Children, namely, 'children living under the then prevailing Apartheid regime in South Africa', or even female genital mutilation.<sup>293</sup> Additionally, problems such as the displacement of children in the contexts of armed conflict, or a narrow adoption of the role of family were source of concern and led to the drafting of the Charter.<sup>294</sup>

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<sup>289</sup> Banda (n 267).

<sup>290</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted in 11 July 2003, entered into force 25 November 2005)

<sup>291</sup> Murray (n 288) para 438.

<sup>292</sup> Chris Maina Peter and Ummu Ally Mwalimu, 'The African Charter on the Rights and Welfare of the Child' in Abdulqawi Yusuf and Fatsah Ouguergouz, *The African Union: legal and institutional framework, a manual on the Pan-African Organization* / (Martinus Nijhoff Pub : Brill,, Martinus Nijhoff Publishers, 2012) 479.

<sup>293</sup> *ibid.*

<sup>294</sup> *ibid.*

Considering the historical context of the Charter, despite the evident CRC influence, there are adaptations to the African values and challenges.<sup>295</sup> The first major difference is the definition of the child, stated in article 2, including all human beings below 18.<sup>296</sup> This is a stricter rule than CRC's legal option, not allowing any earlier factors to end childhood previous to the benchmark. This option of the drafters is specifically relevant in the African continent, where childhood is not often connected with a specific age but 'with the physical capacity to perform acts which are normally reserved for adults: e.g. initiation ceremonies, or marriage'.<sup>297</sup>

State obligations are also an area of divergence, since there is no distinction between the two first generations of rights, as occurs in the 4<sup>th</sup> article of the CRC.<sup>298</sup> Although, some rights include the principle of progressive realization in special scenarios, which is the case of education.

Article 1 of the Charter simply provides that States must recognize the rights, duties and freedoms in the document and a general obligation to:

undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.<sup>299</sup>

However, the influence of the CRC is immediately perceptible in Articles 3, 4 and 5, enshrining the principles of non-discrimination, best interest of the child, and its survival and development.<sup>300</sup> The 7<sup>th</sup> Article settles the relevance of the views of the child.<sup>301</sup>

The right to education is regulated in the 11<sup>th</sup> provision and establishes that it is a right for every child, in conformity with the Banjul Charter.<sup>302</sup> However, contrarily to the ACHPR, the right to education is deeply developed in the document and reveals a close approach to the ACHPR Commission's guidelines.

Firstly, the aims of education are provided in an extensive list. States are required to ensure that the education is directed to the development of the child's personality, talents, mental and physical ability, while fostering respect for human rights and fundamental freedoms. Additionally, education must be directed at the preservation of African morals, values and culture, prepare the child for a responsible life in a free society and promote understanding of tolerance. Moreover, education shall verse the preservation of national

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<sup>295</sup> *ibid* 480.

<sup>296</sup> African Charter on the Rights and Welfare of the Child (n 104) art 2.

<sup>297</sup> Peter and Mwalimu (n 293) 481.

<sup>298</sup> *ibid*.

<sup>299</sup> African Charter on the Rights and Welfare of the Child (n 104) art 1.

<sup>300</sup> *ibid* art 3,4 and 5.

<sup>301</sup> *ibid* art 7.

<sup>302</sup> *ibid* art 11.

independence, territorial integrity and respect for the environment and natural resources. Finally, the promotion of the child's knowledge of primary health care must be guaranteed.

Secondly, the specific obligations of States are enumerated according to the education levels in question.<sup>303</sup> The Committee of Experts emphasizes that the free and compulsory basic education must be 'substantively free for the poor who would otherwise be excluded, without collateral costs being required'.<sup>304</sup> Acknowledging the necessity for substantive equality, the State of Mozambique must ensure the free element of primary education and guarantee that no collateral costs are required for IDCs. Secondary and higher education are addressed, and similarly to the ACHPR, the obligation to progressively make the levels accessible is present.

The duties and rights of the parents have a privileged role in the Charter.<sup>305</sup> The State has the obligation to respect the parent's right to choose for their children a different school from the one established by the public authorities. However, there is no full discretionary in the parents' education perspective. Similarly to school discipline, parental disciplining techniques must be subject to patterns of humanity and respect the child's dignity.

Finally, girls who become pregnant have specific protection and 'shall have an opportunity to continue with their education based on their individual ability'.<sup>306</sup> Therefore, Mozambique is obliged to ensure, by taking all appropriate measures that pregnant IDGs have an equal opportunity to complete their education.

### 3.2.4 African Youth Charter (2006)

The African Youth Charter is a recent human rights standard that aims at positivizing the rights of the youth in a development perspective, 'taking into consideration the fact that the youths are tomorrow's future and also the leaders of tomorrow'.<sup>307</sup> Youth is a concept that can be interpreted in different directions. Jones defines youth 'in the sense of "youthhood" to describe the part of the life course between childhood and adulthood'.<sup>308</sup> Similarly, Ubi describes youth as the period of life, in which childhood is over and 'marks the beginning of a new phase that transcends into adulthood'.<sup>309</sup> In this light, and despite young people not being the right-holder addressed in this research, the African Charter

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<sup>303</sup> Murray (n 288) para 438.

<sup>304</sup> African Committee of Experts on the Rights and Welfare of the Child 'General Comment no 5 on article 1 of the African Children's Charter on "State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection' (2018)

<sup>305</sup> African Charter on the Rights and Welfare of the Child (n 104) art 11.

<sup>306</sup> Ibid.

<sup>307</sup> Efem Ubi, 'African Youth Charter: Prospects for the Development of the African Youth' (2007) 4.

<sup>308</sup> Gill Jones, *Youth* (1st edn, Polity Press 2009) 2.

<sup>309</sup> Ubi (n 308) 2.

presents young people as ‘every person between the ages of 15 and 35 years’.<sup>310</sup> Therefore, the standards present in the Charter apply to IDCs as long as they are between 15 and 18 years old.

The right to education is positivized in article 13.<sup>311</sup> The obligations present in the Charter are very similar to those in the African children’s treaty, namely the introduction of education as a universal right. The specificity of the Youth document is the mentioning of quality education in the general provision. Additionally, article 13 emphasizes the value of all formats of education, including the informal practices.<sup>312</sup>

It is relevant to note that the aims of education remain essentially similar to the ones extensively positivized in ACRWC, addressed in the previous section (3.2.3). However, two new elements are introduced. One being the necessity to develop the cognitive, emotional, and creative abilities.<sup>313</sup> Secondly, ‘the development of life skills to function effectively in society’ is included, towards tackling specific challenges such as HIV/AIDS, reproductive health or even substance abuse.<sup>314</sup>

Regarding the State obligations, in the context of the different education levels, the standards remain close to the previously mentioned in the Charter on children’s rights. Therefore, Mozambique must ensure free and compulsory primary education, while taking all appropriate measures to make secondary education accessible and progressively free. Regarding higher education, the Youth charter innovates and requires states to all appropriate measures to establish distance learning centers in higher education.<sup>315</sup> Additionally, the state is obliged to act appropriately to strengthen participation in science and technology, facilitate the use of modern technology and access to information, and ensure quality in education to further develop critical thinking.

### **3.2.5 African Union Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention)**

The African continent is the most affected by internal displacement with a third of the world’s internally displaced people being on African soil.<sup>316</sup> In this light, ‘the need for an adequate response to the protection and assistance of IDPs has resonated significantly’.<sup>317</sup> According to Maru, the ‘Kampala Convention is a remarkable treaty that puts Africa at

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<sup>310</sup> African Youth Charter (adopted in 2 July 2006, entered into force 8 August 2009)

<sup>311</sup> African Youth Charter (n 311).

<sup>312</sup> African Youth Charter (n 311).

<sup>313</sup> African Youth Charter (n 311).

<sup>314</sup> African Youth Charter (n 311).

<sup>315</sup> African Youth Charter (n 311).

<sup>316</sup> Romola Adeola, ‘The Impact of the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa’ (2019) 19 African Human Rights Law Journal 592.

<sup>317</sup> *ibid.*

the forefront of international norm-setting'.<sup>318</sup> Maru further argues that by drawing on the GPID, the Kampala Convention transforms the guiding principles into binding provisions.<sup>319</sup>

The convention has twenty-three provisions, naturally including the general obligation to protect the 'rights of all persons against being arbitrarily displaced'.<sup>320</sup> Furthermore, the convention obliges States to prevent conditions that lead to internal displacement, while also highlighting the necessity to protect and facilitate 'access to humanitarian assistance'.<sup>321</sup> The document further establishes obligations for international organizations and humanitarian agencies (article 6), for armed groups (article 7) and for the AU (article 8).<sup>322</sup> Maru argues that one of the biggest contributions of the convention is the 'recognition of climate change as a cause, trigger and accelerator of internal displacement and its emphasis of the need to protect climate change-induced IDPs'.<sup>323</sup>

Despite the major impact for the protection of IDCs in the African context, the legal approach on the right to education was different from the Guiding Principles. Article 9.2(b) establishes the state obligation to provide to 'the fullest extent practicable and with the least possible delay' education to IDC.<sup>324</sup> The education provision includes other basic needs that shall be guaranteed to local and host communities. In this light, the Kampala Convention is not a ground-breaking standard for the protection of the IDCs' right to education. In spite of that, the standard is pivotal to the protection of the vulnerable group in the continent, especially considering the inclusion of AU obligations.

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<sup>318</sup> Mehari Taddele Maru, *The Kampala Convention and Its Contributions to International Law: Legal Analyses and Interpretations of the African Union Convention for the Protection and Assistance of Internally Displaced Persons* / (Eleven International Publishing, 2014) 321 <<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&AN=794962>> accessed 17 June 2022.

<sup>319</sup> *ibid* 323.

<sup>320</sup> Adeola (n 317) 595.

<sup>321</sup> *ibid*; African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (n 105) art 3.

<sup>322</sup> *ibid* 596.

<sup>323</sup> Mehari Taddele Maru (n 319) 322.

<sup>324</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (n 105) art 9.

### 3.3 National Standards:

#### 3.3.1 Constituição da República de Moçambique (Mozambique's Constitution)

To successfully verify the national standards of a country towards a specific right it is imperative to start within the global legal context. Therefore, the hierarchically superior legal document in the Mozambican juridic order must be the starting point. Mozambique's national constitution dates from 2004 and is the third constitutional document of the State.

The right to education is specifically established in article 88 of the constitution as a right and duty of every citizen.<sup>325</sup> Paragraph two of the constitutional norm establishes that the State of Mozambique promotes continuous education until the professional level and the equality of every citizen to enjoy the right.<sup>326</sup> The right to education is inserted in the section of the economic, social and cultural duties and rights, and naturally leaves the specificities of implementation to ordinary laws.

Additionally, article 113 establishes that the State organizes and develops education through a national education system.<sup>327</sup> The norm sets the aims of education towards national unity, ending illiteracy, establishing scientific and technical dominance while developing morally and civically the citizens. Furthermore, the constitutional text obliges the State to program education and culture without any political, aesthetic, ideological or religious agenda.

The absence of regulation for primary and secondary education in the document contrasts with the complex provision on the higher level.<sup>328</sup> Article 114 regulates the public higher educational institutions establishing that those should guarantee equality and equity of opportunities. Higher education shall be democratized and elevate the educative and scientific level of the country. Regarding private institutions, both in general terms and particularly for higher education, the State must control their activity that is subjected to the law.

The role of the family is equally included in Constitutional text, considering that the State and the family have a joint task of ensuring the child's education.<sup>329</sup> Article 120 further settles that education should transmit the values of national unity, love for the nation, gender equality, respect and social solidarity.<sup>330</sup> Finally, Article 203 regulates the competences of the Council of Ministers, in which is including managing the sector of education.<sup>331</sup>

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<sup>325</sup> Constituição da República de Moçambique (n 107) art 88.

<sup>326</sup> Constituição da República de Moçambique (n 107).

<sup>327</sup> Constituição da República de Moçambique (n 107) art 113.

<sup>328</sup> Constituição da República de Moçambique (n 107) art 114.

<sup>329</sup> Constituição da República de Moçambique (n 107) art 120.

<sup>330</sup> Constituição da República de Moçambique (n 107).

<sup>331</sup> Constituição da República de Moçambique (n 107) art 203.

### 3.3.2 Lei do Sistema Nacional de Educação (Law on the National Education System)

The legal sources for the national education system have been established in 1992 and have received multiple modifications in 2018, 2019 and 2021. As exposed before, the system is composed of six systems of education (see section 1.2). It is important to note that the system relies on several principles.<sup>332</sup> Firstly, the right to education is settled as a right of all Mozambicans and a right and duty of the State.<sup>333</sup> Moreover, the system should promote a democratic and responsible citizenship while respecting human rights, democratic principles and promoting solidarity and tolerance.<sup>334</sup> The system must be secular and inclusive, demonstrating equality and equity in the access to education.<sup>335</sup>

The law on the Education System establishes that basic education is mandatory.<sup>336</sup> Article 4 of the document establishes that basic education corresponds to the educative period in which children acquire the fundamental attributes for the exercise of citizenship and to understand the world.<sup>337</sup> Moreover, that period in the Mozambican system must be considered, according to the source, from the first to the ninth grade.<sup>338</sup> However, regarding the free element, the System defines two different levels of gratuity.<sup>339</sup> The first, for primary education (from first to sixth grade) includes total exemption of tuition fees, enrolment payments and school books.<sup>340</sup>

The second, includes the first cycle of secondary education (from the seventh to the ninth grade) and simply includes the exemption of the enrollment fee.<sup>341</sup> In this scenario, it is very hard to defend the gratuity of the mentioned stage of education. Moreover, one might question, if the discrepancy between the compulsory and the free education could lead to the disregard, due to impossibility, of the mandatory nature of the seventh, eighth and ninth grade. Nonetheless, the international and regional obligations regarding free and compulsory primary education are respected, in the legal scope.

The document does not establish specific State obligations towards the right in the other levels of education (second cycle of secondary, professional or higher) but simply develops on the objectives and characteristics of these levels.

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<sup>332</sup> Lei 79/2019 (n 120) art 3.

<sup>333</sup> Lei 79/2019 (n 120).

<sup>334</sup> Lei 79/2019 (n 120).

<sup>335</sup> Lei 79/2019 (n 120).

<sup>336</sup> Lei 79/2019 (n 120) art 5.

<sup>337</sup> Lei 79/2019 (n 120) art 4.

<sup>338</sup> Lei 79/2019 (n 120).

<sup>339</sup> Lei 79/2019 (n 120) art 7.

<sup>340</sup> Lei 79/2019 (n 120).

<sup>341</sup> Lei 79/2019 (n 120).

## **Chapter 4: Response to the internally displaced educative crisis**

### **4.1 Response of the main actors**

To verify the compliance with the international, regional and national standards it is necessary to consider the efforts taken by the State of Mozambique to fully realize the right to education for IDCs. Considering the possibility to ask for support and even the obligation to seek for cooperation, the roles of the international community and civil society are also relevant. Finally, acknowledging the African Union's obligations in the regional system, and in specific towards IDPs, the organization's part in combating the humanitarian crisis is covered.

#### **4.1.1 Response of the government**

In order to conclude for the compliance or violation of the standards, one must verify the measures taken by the Mozambican institutions to realize the right to education for IDCs. Firstly, the annual budget of the state and the percentage of resources spent on education must be examined. Secondly, specific measures on education, or their absence, will be analyzed. Thirdly, the position of the Mozambican State towards international and regional support is consider. Finally, the military intervention and the efforts to achieve documentation for IDPs are mentioned, considering their direct effect for the right to education in practice.

#### **The Annual State Budget:**

Since 2017, the year in which the conflict in Cabo Delgado emerged and the internal displacement crisis began, the annual budget planification has showed positive signs regarding the education sector. In 2017, the legal possible expenses for education were approximately 48,000,000 MT, consisting in 23 percent of the total expense budget for the year.<sup>342</sup> Additionally, this number represented approximately 7 percent of the Mozambican GDP.<sup>343</sup> The absolute value invested in education consistently increased from 52,000,000 to 66,000,000 MT in period between 2018 and 2020.<sup>344</sup> Despite the

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<sup>342</sup> República de Moçambique, 'Orçamento de Estado Para 2018' (República de Moçambique 2017) para 79 <<https://www.mef.gov.mz/index.php/publicacoes/politicas/orcamento-de-estado/oe-2018/469-fundamentacao-do-oe-2018/file?force-download=1>>.

<sup>343</sup> *ibid* 85.

<sup>344</sup> *ibid* 79; República de Moçambique, 'Orçamento de Estado Para 2020' (República de Moçambique 2020) para 107 <<https://www.mef.gov.mz/index.php/todas-publicacoes/instrumentos-de-gestao-economica-e-social/orcamento-de-estado/oe-2020/875-documento-de-fundamentacao-do-orcamento-do-estado-para-2020/file?force-download=1>>; República de Moçambique, 'Orçamento de Estado Para 2019' (República de Moçambique 2018) para 111 <<https://www.mef.gov.mz/index.php/publicacoes/politicas/orcamento-de-estado/oe-2019/556-fundamentacao-do-oe-2019/file?force-download=1>>.

small decrease in 2021, easily justified by the effects of the pandemic, the sector remained the highest absorber of state resources since 2017.<sup>345</sup>

As a measure of comparison, considering the percentage of resources, Mozambique has superior numbers than some European countries in 2018, such as Portugal (4,4 percent) or Germany (4.9 percent).<sup>346</sup>

However, another important indicator is the allocation of those resources in the educative scenario of the internal displacement. Considering this, one must note that the internal displacement crisis is not mentioned in any of the budgetary documents of the country and therefore, is directly considered in the allocation of the resources.<sup>347</sup> Consequently, the distribution is based only on the population number, territory and poverty rates.<sup>348</sup> This reality is negatively surprising when considering that the number of IDPs is progressively increasing and affecting directly nearly 3 percent of the entire population. Moreover, hosting families and other actors are severely affected by the phenomenon.

To establish a comparison, and not diminishing the tremendous impact of COVID-19 on economies and societies, the pandemic was mentioned 39 times in the 2021 annual budget.<sup>349</sup> Additionally, the combat to COVID-19 is presented as a priority in the allocation of resources in two distinct points, whereas the protection of the internally displaced is absent.<sup>350</sup>

Despite the lack of attention given to the internal displacement crisis, it is a national document that provides very broad and general terms for the country's finances. In this light, it might be defensible by the State that other regional and local specific documents would more efficiently address the issue. Furthermore, the State could argue that in a general document, the IDPs were indirectly considered through the criterion of poverty.

Acknowledging this possible debate, one must argue that the State is dealing with the crisis since 2017, rapidly marching towards one million affected people and has failed to mention it in the priorities for resource allocation. Regardless of the policies outside the main legal financial document, this absence demonstrates that IDPs' protection is not a primordial goal. In addition to that, the inclusion of IDPs in the social criterion of poverty

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<sup>345</sup> República de Moçambique, 'Orçamento de Estado Para 2021' (República de Moçambique 2020) para 152 <[https://www.cabri-sbo.org/uploads/bia/Mozambique\\_2021\\_Approval\\_External\\_EnactedBudget\\_MinEcosFin\\_SADC\\_Portguese.pdf](https://www.cabri-sbo.org/uploads/bia/Mozambique_2021_Approval_External_EnactedBudget_MinEcosFin_SADC_Portguese.pdf)>.

<sup>346</sup> 'Despesas Das Administrações Públicas Em Educação Em % Do PIB' (*Fundação Francisco Manuel dos Santos*) <<https://www.pordata.pt/Portugal/Despesas+das+Administra%C3%A7%C3%B5es+P%C3%BAblicas+em+educa%C3%A7%C3%A3o+em+percentagem+do+PIB-867>> accessed 2 July 2022; 'Germany - Public Spending On Education, Total (% Of GDP)' (*Trading Economics*) <<https://tradingeconomics.com/germany/public-spending-on-education-total-percent-of-gdp-wb-data.html>> accessed 2 July 2022.

<sup>347</sup> República de Moçambique, 'Orçamento de Estado Para 2021' (n 346) para 155.

<sup>348</sup> *ibid.*

<sup>349</sup> *ibid.*

<sup>350</sup> República de Moçambique, 'Orçamento de Estado Para 2021' (n 346) para 109.

does not proceed since there is no direct correlation between the two realities. Moreover, the necessities of the vulnerable situations are distinct. Therefore, one must conclude that, regardless of the positive investment on education, the State's principal financial documents since 2017 have overlooked the displacement crisis.

### **Plano Estratégico da Educação 2020-2029**

The PEE is a strategic plan for education that orientates the action of the Mozambican government in the field of education. It defines the main vulnerabilities and challenges of the educative system but also establishes pivotal targets to achieve in the sector.<sup>351</sup>

The program demonstrates multiple positive aspects towards the protection of vulnerable groups' right to education. The clear recognition that gender has impact on the educative possibilities is present and an emphasis on the security and inclusion of girls is established.<sup>352</sup> Religious and cultural practices that impede girls from attending school are targeted as the focus for popular sensibilization.<sup>353</sup>

Regardless of the IDPs absence from the document, in general terms, it is established that equity and inclusion in education is a priority regarding access and participation.<sup>354</sup> This implies that the State must ensure the inexistence of disparities considering social, geographic and gender factors.<sup>355</sup> The plan sets the necessity to develop a strategy to prevent and respond to natural disasters and other emergencies.<sup>356</sup> The strategy would imply the quick reconstruction of the infrastructures, and formation of professors to reduce the damage caused by disasters and the ability to support psychologically the affected students.<sup>357</sup>

However, the document was released in May of 2020 and fails to address properly the necessities and the specificities of the IDCs. Firstly, conflict and terrorist action are only referred once, being considered external risks to the implementation of the policies proposed. In addition to that, while reporting on the economic and social context of Mozambique, the only mention to natural disasters is simply to justify the destruction of educative infrastructure.<sup>358</sup> Furthermore, the internal displacement crisis and the almost half a million IDCs is absent from the challenging factors.

Considering these positioning of the program, one must conclude that the plan is unable to respond to the IDC's challenges, since several of them are specific to their condition. An illustrative example of this reality, is insecurity, being only targeted in the context of

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<sup>351</sup> Ministério da Educação e Desenvolvimento Humano (n 118) 13.

<sup>352</sup> *ibid* 26.

<sup>353</sup> *ibid*.

<sup>354</sup> *ibid* 38.

<sup>355</sup> *ibid* 39.

<sup>356</sup> *ibid* 31.

<sup>357</sup> *ibid* 54.

<sup>358</sup> *ibid* 21.

GBV, but not in the context of armed attacks to schools, or on the way to school. Finally, acknowledging that the document was created three years after the beginning of the crisis, one must disregard the possibility of not addressing the IDPs' right to education on the grounds of irrelevance for the overall system.

Notwithstanding the insufficient theoretical protection for IDPs' right to education in the program, regarding its results, some practical measures have been taken to mitigate the impact of the armed conflict and natural disasters.<sup>359</sup> The MINEDH developed capacity building activities, reconstructed and repaired materials, gather partners to distribute student kits, provided food in the learning environment for 44,000 children, constructed temporary learning spaces, among other sporadic measures.<sup>360</sup>

### **Política de Estratégia de Gestão dos deslocados Internos:**

In August of 2021, after 4 years of conflict in Cabo Delgado, the government of Mozambique created a strategic policy to deal with IDPs.<sup>361</sup> The national policy applies equally to all internal displaced present in the territory of the country.<sup>362</sup> The main purpose of the plan was to prevent displacement while assisting, protecting and promoting the reintegration of the internal displaced within a context of sustainable development.<sup>363</sup>

The government is established as the main actor to reach these goals, but civil society, international organizations, donors, the enterprise sector, the host communities and even the IDPs are referred as key actors.<sup>364</sup> Most of the legal document and the strategic actions proposed are indirectly relevant to protect the right to education. For instance, measures towards ensuring proper access to food and health care are essential to allow a child to go to school.

However, education is directly focused on the strategic action to integrate students in schools, educative establishments, and professional training in their reception places.<sup>365</sup> Moreover, the resolution sets that professors must be capacitated in environmental topics such as risk prevention or climate change.<sup>366</sup> Finally, responsible organizations for these positive actions are settled.<sup>367</sup>

Nonetheless, the broad strategic actions leave an extensive margin of implementation for the agencies responsible. In addition to that, it is extremely concerning that there is no

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<sup>359</sup> República de Moçambique, 'Plano Estratégico de Educação (2020-2029) 23ª Reunião Anual de Revisão, 2022' (República de Moçambique 2022) 86.

<sup>360</sup> *ibid* 3.7.

<sup>361</sup> Lusa, 'Moçambique aprova política e estratégia especial para deslocados' *DW.COM* (4 August 2021) <<https://www.dw.com/pt-002/mo%C3%A7ambique-aprova-pol%C3%ADtica-e-estrat%C3%A9gia-especial-para-deslocados/a-58752696>> accessed 3 July 2022.

<sup>362</sup> Resolução n.º 42/2021 BR 173 Série I para 3.

<sup>363</sup> Resolução n.º 42/2021 (n 363) 4.

<sup>364</sup> Resolução n.º 42/2021 (n 363) 6.

<sup>365</sup> Resolução n.º 42/2021 (n 363) 9.

<sup>366</sup> Resolução n.º 42/2021 (n 363).

<sup>367</sup> Resolução n.º 42/2021 (n 363).

special financial plan for the policy. Naturally, this means that every action must utilize the resources in the annual budget for the general sectors, increasing the discretionary nature of the plan.<sup>368</sup> The monitoring department is another area of concern. Although a monitoring entity is established, it is the political body of the main entity (INGD) responsible for the implementation of the policy.<sup>369</sup> Additionally, the law does not create a concrete department of INGD to coordinate the program.

There is no doubt that this document is extremely important to establish the role of each actor in the protection of IDPs and recognizing the distinct nature of challenges faced by the vulnerable group. Notwithstanding the late creation of the policy, it is a positive sign of the preoccupation with the IDPs' living conditions. Moreover, it is a relevant recognition of the importance of addressing the groups' specific and indispensable needs.

### **Plano de Reconstrução de Cabo Delgado:**

The policy to rebuild Cabo Delgado, the most affected region by the IDPs crisis, was established in 2021.<sup>370</sup>

The plan reports the destruction of 348 primary schools, 8 secondary schools, lost of educative material and the closing of 2 technical institutes.<sup>371</sup> The reconstruction plan focuses on the recuperation of infrastructures to ensure the reestablishment of several basic necessities, including education.<sup>372</sup> By setting that education services must be reestablished immediately, the right features as one of the priorities of the plan.

To achieve the objective proposed, the plan implies the creation of conditions for the immediate return of students and professors. Therefore, the availability of temporary spaces, reposition of destroyed equipment, distribution of books and psychosocial support must be in place.<sup>373</sup> In addition to that, reconstruction of destroyed infrastructures and guarantee of normal functioning of the institutions is imperative.<sup>374</sup> On a short-term basis, 7,500,000 USD were established for education, a value lower than the investment on energy or in the piscatory sector.<sup>375</sup> The total investment on education previewed is 13,550,000 USD within the 300,000,000 USD budget for the entire recuperation program.

While the recovery plan for the region is theoretically a major step for the protection of the right to education for IDCs in Cabo Delgado, one must emphasize the critics suffered

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<sup>368</sup> *ibid* para 8.

<sup>369</sup> *ibid*.

<sup>370</sup> República de Moçambique, 'Plano de Reconstrução de Cabo Delgado Das Zonas Afectadas Pelo Terrorismo (2021-2024)' <<https://adin.gov.mz/wp-content/uploads/2021/11/PRCD-Plano-de-Reconstrucao-de-Cabo-Delgado.pdf>>.

<sup>371</sup> *ibid* 7.

<sup>372</sup> *ibid* 11.

<sup>373</sup> *ibid* 16.

<sup>374</sup> *ibid*.

<sup>375</sup> *ibid* 24.

by the program from the civil society. The organization Centro de Integridade Pública (CIP) has argued that some districts, due to their connections with gas exploration are being prioritized.<sup>376</sup> Furthermore, accuses the government of forcing public employers to return to one of the beneficiated districts to maintain certain functions.<sup>377</sup> Additionally, the organization Centro para a Democracia e Desenvolvimento (CDD) criticized the sideline role attributed to civil society and further emphasizes that the monitoring system establish by the plan is made by key implementing actors, leading to lack of accountability and transparency.<sup>378</sup> Additionally, CDD defends that the civil society should serve to identify necessities and articulate mechanisms to achieve the objectives of the plan, a distinctive function from the reality installed.<sup>379</sup>

### **Programa de Resiliência e Desenvolvimento Integrado do Norte:**

Agência de Desenvolvimento Integrado do Norte (ADIN) is a public agency created to develop socioeconomically the northern region of Mozambique, including the provinces of Cabo Delgado, Niassa and Nampula. These provinces are the most affected by the increasing phenomenon of internal displacement, but also severely marked by poverty. Towards the improvement of the region, the agency prepared a strategy that was submitted to approval by the governmental entity responsible (Conselho de Ministros) in November of 2021.<sup>380</sup> Finally, after months, in June 2022 a different program was approved and it is estimated to include the budget of 2,500,000,000 USD.<sup>381</sup> The financial resources will be financed by the World Bank, the African Bank for Development, the UN and the EU.<sup>382</sup> This plan will be based on a centralized administration that once again is criticized by the CDD since the role of civil society is undermined.<sup>383</sup>

Another critique presented by the organization is the non-approval of the program in 2021, due to political reasoning.<sup>384</sup> CDD argues that the introduction of internal causes

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<sup>376</sup> Borges Nhamirre, 'Plano de Reconstrução de Cabo Delgado Privilegia Distritos Sob Influência Da Indústria de Gás' (Centro de Integridade Pública 2022) 1 <<https://www.cipmoz.org/pt/2022/05/16/plano-de-reconstrucao-de-cabo-delgado-privilegia-distritos-sob-influencia-da-industria-de-gas/>>.

<sup>377</sup> *ibid*; 'Funcionários e agentes do Estado obrigados a regressar em definitivo a Mocímboa da Praia' (*Carta de Moçambique*) <<https://www.cartamz.com/index.php/sociedade/item/10306-funcionarios-e-agentes-do-estado-obrigados-a-regressar-em-definitivo-a-mocimboa-da-praia>> accessed 3 July 2022.

<sup>378</sup> 'Plano de Reconstrução de Cabo Delgado ignora o papel estruturante da sociedade civil na resposta à crise na província' *Vozes do Norte de Moçambique* (March 2022) <<https://cddmoz.org/no-dia-23-de-marco-de-2022-organizacoes-da-sociedade-civil-em-cabo-delgado-reuniram-se-com-o-governo-provincial-a-secretaria-de-estado-e-a-agencia-de-desenvolvimento-integrado-do-norte-adin-para-d/>> accessed 3 July 2022.

<sup>379</sup> *ibid* 3.

<sup>380</sup> 'Finalmente... Governo aprova Programa de Resiliência e Desenvolvimento Integrado do Norte' *Vozes do Norte de Moçambique* (22 June 2022) 1 <<https://cddmoz.org/finalmente-governo-aprova-programa-de-resiliencia-e-desenvolvimento-integrado-do-norte/>> accessed 3 July 2022.

<sup>381</sup> 'Estratégia de Resiliência e Desenvolvimento Integrado do Norte vai custar 2,5 biliões de dólares' *Vozes do Norte de Moçambique* (15 May 2022) 3.

<sup>382</sup> 'Finalmente... Governo aprova Programa de Resiliência e Desenvolvimento Integrado do Norte' (n 381) 2.

<sup>383</sup> *ibid* 4.

<sup>384</sup> *ibid* 2.

for the conflict in Cabo Delgado displeased some members of the government since the State's official position considered the extremist attacks a result of external factors.<sup>385</sup> The original document provided that poverty, political and economic exclusion, social inequalities or even land expropriation were contributing factors for the extremism, and in the opinion of CDD, that was the cause for the delay.<sup>386</sup>

In this light, it is imperative to note that, regardless of the reasoning, the late acceptance of the plan and consequent delay of the implementation have certainly resulted in the lack of protection for the IDCs' right to education in the northern region. Moreover, since the financial resources are external, Mozambique's role should have been rapidly facilitating the allocation of the resources to the population in need.

### **Military intervention:**

Since 2017 that armed attacks have been terrorizing the northern part of the country. Towards the realization of IDCs' right to education, regardless of the effort to ensure the facilities and the human resources, it is important to establish security in the areas and prevent school attacks. However, it is undeniable that the military mission of the Mozambican army has failed, since 328 schools were destroyed and at least 6 professors were killed in the region.<sup>387</sup>

Furthermore, the armed attacks continue to aggravate the internal displacement crisis. In June 2022, several attacks have been reported and naturally increased the displacement flux.<sup>388</sup> Despite the positive results of the international military interventions, especially from the Rwandan forces, the defense planned as revealed to be flawed and insufficient to protect the population's rights. The newspaper *Carta de Moçambique* has denounced the fake existence of 7 thousand soldiers in the army, and the respective salaries being paid to high political figures, high patent militaries and their relatives, among others.<sup>389</sup> In this light, Adriano Nuvunga reveals that corruption is playing a relevant role in the inability to control the terrorist threat.<sup>390</sup>

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<sup>385</sup> *ibid.*

<sup>386</sup> *ibid.*

<sup>387</sup> Lusa, 'Cabo Delgado: Mais de 330 escolas foram destruídas nos ataques armados | DW | 16.09.2021' *Deutsche Welle* (16 September 2021) <<https://www.dw.com/pt-002/cabo-delgado-mais-de-330-escolas-foram-destru%C3%ADdas-nos-ataques-armados/a-59199282>> accessed 3 July 2022.

<sup>388</sup> Lusa, 'Cabo Delgado: Novo ataque no sul da província causa três mortos' *Deutsche Welle* (27 June 2022) <<https://www.dw.com/pt-002/cabo-delgado-novo-ataque-no-sul-da-prov%C3%ADncia-causa-tr%C3%AAAs-mortos/a-62274402>> accessed 5 July 2022.

<sup>389</sup> 'Insurgência em Cabo Delgado: porque 24 países enviaram tropas – analisa Joe Hanlon' (*Carta de Moçambique*) <<https://cartamz.com/index.php/politica/item/10752-insurgencia-em-cabo-delgado-porque-24-paises-enviaram-tropas-analisa-joe-hanlon>> accessed 4 July 2022.

<sup>390</sup> 'Corrupção impede Estado de lidar com o extremismo no norte de Moçambique', *RFI* (1 June 2022) <<https://www.rfi.fr/pt/programas/convidado/20220601-corrup%C3%A7%C3%A3o-impede-estado-de-lidar-com-o-extremismo-no-norte-de-mo%C3%A7ambique>> accessed 4 July 2022.

The military forces of the State are also accused of violating the population's rights. According to Human Rights Watch (HRW):

State security forces were implicated in Human Rights violations during counterterrorism operations in northern Cabo Delgado province, including intimidation, ill-treatment of displaced people, and use of unlawful force against civilians.<sup>391</sup>

In the same direction, Amnesty International reports that the government authorities not only commit human rights violations against the captive armed group members but have conducted practices of sexual abuse and enforced disappearing among civilians.<sup>392</sup> Moreover, CNDH has received complaints about the forces' abuses and conducts of sexual violence.<sup>393</sup> The organization Fórum de Monitoria do Mecanismo de Revisão Periódica Universal dos Direitos Humanos das Nações Unidas em Moçambique, reaches a step further arguing in favor of the creation of a special court to address the crimes committed.<sup>394</sup>

### **Documentation measures:**

Since the IDCs' right to education often faces the challenge of documentation it is important to refer that 45 percent of all the IDPs originated in Cabo Delgado, according to Global Cluster Mozambique, do not have civil documentation.<sup>395</sup> Therefore, some children might face the extra challenge of not being able to register in a school.<sup>396</sup> Nonetheless, supported by the UE, the German government and IOM, in May 2022, the Mozambican government managed to issue 10,000 birth certificates and assign 180,000 identification documents to IDPs.<sup>397</sup>

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<sup>391</sup> Human Rights Watch (n 11).

<sup>392</sup> Amnesty International, 'Mozambique: Civilians Killed as War Crimes Committed by Armed Group, Government Forces, and Private Military Contractors – New Report' (2021) <<https://www.amnesty.org/en/latest/news/2021/03/mozambique-civilians-killed-as-war-crimes-committed-by-armed-group-government-forces-and-private-military-contractors-new-report/>> accessed 4 July 2022.

<sup>393</sup> Agência Lusa, 'Comissão Nacional dos Direitos Humanos de Moçambique defende criação de código para militares estrangeiros' *Observador* (29 July 2021) <<https://observador.pt/2021/07/29/comissao-nacional-dos-direitos-humanos-de-mocambique-defende-criacao-de-codigo-para-militares-estrangeiros/>> accessed 4 July 2022.

<sup>394</sup> Agência Lusa, 'ONG Pede Um Tribunal Especial Para Julgar Crimes Em Cabo Delgado' *Público* (15 November 2021) <<https://www.publico.pt/2021/11/15/mundo/noticia/ong-pede-tribunal-especial-julgar-crimes-cabo-delgado-1985063>> accessed 4 July 2022.

<sup>395</sup> Protection Cluster Mozambique, 'Documentação Civil Para Deslocados Internos Em Moçambique' (Protection Cluster Mozambique) 1 <[https://www.globalprotectioncluster.org/wp-content/uploads/210817\\_Briefing\\_Note\\_Civil\\_Registration\\_POR\\_FINAL.pdf](https://www.globalprotectioncluster.org/wp-content/uploads/210817_Briefing_Note_Civil_Registration_POR_FINAL.pdf)>.

<sup>396</sup> *ibid* 2.

<sup>397</sup> Maria Toro, 'EU, the German Federal Government, and IOM Support the Government of Mozambique in the Provision of Civil Documentation to Internally Displaced Persons (IDPs) and Host Communities in Cabo Delgado, Mozambique' *IOM Mozambique* (12 May 2022) <<https://mozambique.iom.int/news/eu-german-federal-government-and-iom-support-government-mozambique-provision-civil-documentation-internally-displaced-persons-idps-and-host-communities-cabo-delgado-mozambique>> accessed 4 July 2022; Delfim Anacleto, 'Deslocados de Cabo Delgado

#### 4.1.2 The role of the International Community:

As provided in most of the international and regional standards, international cooperation has a vital role in ensuring human rights. Mozambique has benefited greatly from international support and, in some years, the external financing even composed more than 50 percent of the annual budget for the country.<sup>398</sup> The role of external entities in the international community is pivotal, when considering the resource level of the African State. In this light and considering that the CRC Committee clearly established the obligation to seek international cooperation, it is imperative to verify the role of the State in guaranteeing international cooperation and ensuring the greatest efficiency possible.<sup>399</sup> In June of 2021 the minister for foreign affairs and cooperation requested international support for the internally displaced.<sup>400</sup> The following year, in March, the Mozambican President Filipe Nyusi asked directly for help from the EU to finance the military forces for combating the terrorists.<sup>401</sup> Moreover, in April 2022, the World Bank was approached to further mobilize resources.<sup>402</sup>

However, despite the request of international help in multiple occasions, several critiques are present. CNDH, defended, already in 2020, the extreme necessity to seek international aid since the government did not possess the resources to face the rising challenges.<sup>403</sup> In the political sphere, the leader of RENAMO, the main opposition party, argued that the government should require support from the international community in a legal and open format.<sup>404</sup> Finally, the government of South Africa publicly expressed the perplexity

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recebem documentos de identificação | DW | 05.05.2022' *Deutsche Welle* (5 May 2022)

<<https://www.dw.com/pt-002/deslocados-de-cabo-delgado-recebem-documentos-de-identifica%C3%A7%C3%A3o/a-61689352>> accessed 4 July 2022.

<sup>398</sup> Ministério da Educação e Desenvolvimento Humano (n 118) 22.

<sup>399</sup> 'General comment No. 19 (2016) on public budgeting for the realization of children's rights (art. 4)' (n 239)

<sup>400</sup> Ramos Miguel, 'Moçambique pede apoio internacional para os deslocados de guerra de Cabo Delgado' *VOA* (3 June 2021) <<https://www.voaportugues.com/a/moçambique-pede-apoio-internacional-para-os-deslocados-de-guerra-de-cabo-delgado/5915537.html>> accessed 15 July 2022.

<sup>401</sup> RFI, 'Moçambique: Filipe Nyusi pede ajuda à UE para financiar força conjunta' *RFI* (10 February 2022) <<https://www.rfi.fr/pt/mo%C3%A7ambique/20220210-mo%C3%A7ambique-filipe-nyusi-pede-ajuda-%C3%A0-ue-para-financiar-for%C3%A7a-conjunta>> accessed 4 July 2022.

<sup>402</sup> VOA Português, 'Ministro moçambicano pede ajuda do Banco Mundial na mobilização de recursos' *VOA* (14 April 2022) <<https://www.voaportugues.com/a/ministro-moçambicano-pede-ajuda-do-banco-mundial-na-mobilização-de-recursos/6536489.html>> accessed 4 July 2022.

<sup>403</sup> Orfeu Lisboa, 'Moçambique deve pedir ajuda internacional para apoiar vítimas do terrorismo em Cabo Delgado' *RFI* (22 October 2020) <<https://www.rfi.fr/pt/mo%C3%A7ambique/20201022-mo%C3%A7ambique-deve-pedir-ajuda-internacional-para-apoiar-v%C3%ADtimas-do-terrorismo-em-cabo-delgado>> accessed 4 July 2022; Alfredo Júnior, 'Governo moçambicano "empurrado" a pedir ajuda humanitária para deslocados em Cabo Delgado' *VOA* (23 October 2020) <<https://www.voaportugues.com/a/governo-moçambicano-empurrado-para-pedir-ajuda-humanitária-para-deslocados-em-cabo-delgado/5633399.html>> accessed 4 July 2022.

<sup>404</sup> Lusa, 'Cabo Delgado: Momade apela ao Governo para pedir ajuda internacional' *Deutsche Welle* (6 April 2021) <<https://www.dw.com/pt-002/cabo-delgado-momade-apela-ao-governo-para-pedir-ajuda-internacional/a-57110994>> accessed 4 July 2022.

regarding the silence on the type of help necessary to face the terrorist threat.<sup>405</sup> In this light, it is imperative to highlight the absence of action in the department until very recently and the inefficiency of the communications to facilitate international aid.

International support has come not only through financial resources (in the annual budgets and the strategic plans to rebuild the northern regions) but also in the form of military forces.<sup>406</sup> In this department, critics target the lack of coordination between different forces and the necessity to have a common strategy for all the troops.<sup>407</sup> Regarding international troops present in the territory, some fear the violation of human rights, namely the CDD that not only appeals for the respect of human rights, but further defends the creation of a code for the external forces.<sup>408</sup>

Transparency is a historically essential concern in the country and that is present in the allocation of the international funds received. Fernando Lima critiques the inexistence of proper transparency mechanisms in the distribution of the funds and defends the immediate necessity to create them.<sup>409</sup> João Mosca, goes a step further in arguing that corruption is already a reality in the allocation of resources.<sup>410</sup> According to the investigator of Observatório do Meio Rural, the government has been denying international organizations and civil society the possibility to distribute the resources directly to the population.<sup>411</sup> Therefore, public institutions and the army are responsible for that task, and according to Mosca, corruption in this process is a generalized

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<sup>405</sup> Agência Lusa, 'Ataques de Moçambique. Governo sul-africano "perplexo" com "silêncio" de Maputo sobre ajuda internacional' *Observador* (12 February 2021) <<https://observador.pt/2021/02/12/ataques-de-mocambique-governo-sul-africano-perplexo-com-silencio-de-maputo-sobre-ajuda-internacional/>> accessed 4 July 2022.

<sup>406</sup> 'Moçambique confirma ajuda internacional no combate ao terrorismo' *Euronews* (26 July 2021) <<https://pt.euronews.com/2021/07/26/mocambique-confirma-ajuda-internacional-no-combate-ao-terrorismo>> accessed 4 July 2022.

<sup>407</sup> Agência Lusa, 'Cabo Delgado: "Divisões profundas" sobre tropas estrangeiras | DW | 12.04.2022' *Deutsche Welle* (12 April 2022) <<https://www.dw.com/pt-002/cabo-delgado-divis%C3%B5es-profundas-sobre-tropas-estrangeiras/a-61451526>> accessed 4 July 2022.

<sup>408</sup> Lusa, 'Comissão Nacional dos Direitos Humanos de Moçambique defende criação de código para militares estrangeiros' (n 394); Lusa, 'Cabo Delgado: ONG apela às tropas estrangeiras para respeito pelos direitos humanos' *Deutsche Welle* (19 July 2021) <<https://www.dw.com/pt-002/cabo-delgado-ong-apela-%C3%A0s-tropas-estrangeiras-para-respeito-pelos-direitos-humanos/a-58315531>> accessed 4 July 2022.

<sup>409</sup> Ramos Miguel, 'Moçambique: Sem transparência, alerta-se que apoio do BM às vítimas da insurgência pode ser desviado' *VOA* (28 April 2021) <<https://www.voaportugues.com/a/mocambique-sem-transparencia-apoio-do-banco-mundial-às-vítimas-da-insurgência-pode-ser-desviado-alerta-analista-5870211.html>> accessed 4 July 2022.

<sup>410</sup> Nádía Issufo, 'Há corrupção na distribuição da ajuda humanitária em Cabo Delgado' *Deutsche Welle* (19 May 2021) <<https://www.dw.com/pt-002/h%C3%A1-corrup%C3%A7%C3%A3o-na-distribui%C3%A7%C3%A3o-da-ajuda-humanit%C3%A1ria-em-cabo-delgado/a-57577667>> accessed 4 July 2022.

<sup>411</sup> *ibid.*

behavior.<sup>412</sup> Furthermore, the Catholic Church has denounced the deviation of funds for the victims of terrorist attacks that never arrived to the people in need.<sup>413</sup>

Despite transparency issues and the late international help appeals, the international community, through organizations, agencies and NGOs has showed a real impact and is responsible to minor the drastic situation for IDCs on the right to education.

The Humanitarian response plan, developed in cooperation with Mozambican entities, has developed a strategy to reach 341,000 children with practical measures and counting with the support of 15 partners.<sup>414</sup> Despite focusing 86 percent of the considered children in need, this plan does not figure the financial resources to be implemented. Moreover, UNICEF developed the program of Recovery and Resilience of the Community in cooperation with ADIN and other governmental bodies, focused on children's rights.<sup>415</sup> Education has a major spotlight in the program that requires 200,000,000 USD to be implemented.<sup>416</sup> Regardless of the funds necessary, this strategic projects, established in an human rights protective perspective are essential to assist the government in its action but also to generate specific information about rights in need to be realized. This reality is particularly important since the INGD (responsible for the data on IDPs in the country) does not provide sufficient information to tackle human rights necessities.<sup>417</sup>

The role of organizations like UNICEF, Médecins sans Frontières, World Food Programme, the International Committee of the Red Cross, IOM or Save the Children are essential in reaching the vulnerable children and realizing, to their best effort, the right to education. Furthermore, the role of providing distinct sources of information allows to improve transparency and state accountability for human violations.

#### **4.1.3 The role of the Civil Society**

The Mozambican civil society has had a direct and indirect impact in the protection of the internal displaced. On one hand, the direct intervention and creation of several

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<sup>412</sup> *ibid.*

<sup>413</sup> Teresa Xavier, 'Governo moçambicano investiga alegado desvio de fundos destinados às vítimas do terrorismo' *RFI* (21 July 2021) <<https://www.rfi.fr/pt/mo%20C3%A7ambique/20210721-governo-mo%20C3%A7ambicano-investiga-alegado-desvio-de-fundos-destinados-%20A0s-vitimas-do-terrorismo>> accessed 4 July 2022.

<sup>414</sup> United Nations Office for the Coordination of Humanitarian Affairs, 'Humanitarian Response Plan Mozambique' (OHCA 2022) 37.

<sup>415</sup> UNICEF, 'Plano de Recuperação e Resiliência Da Comunidade 2022-2024' (UNICEF 2022) <<https://www.unicef.org/mozambique/media/4606/file/Plano%20de%20recupera%C3%A7%C3%A3o%20e%20resili%C3%Aancia%20da%20comunidade%202022-2024.pdf>>.

<sup>416</sup> *ibid.*

<sup>417</sup> Instituto Nacional de Gestão e Redução do Riscos de Desastres, 'Deslocados Internos | INGD' (*INDG*) <<https://www.ingd.gov.mz/deslocados-internos/>> accessed 4 July 2022.

programs to mitigate the impact of the displacement is notable.<sup>418</sup> On the other, the immense pressure created on public authorities, demanding the public petition for international help, or denouncing the inertia on governmental action revealed positive results.<sup>419</sup> In addition to that, civil society has indirectly monitored allocation of resources and has been vocal in denouncing corruption practices and human rights violations.

Notwithstanding these positive actions, as discussed previously, the state authorities are shortening the role of the civil society, not allowing the active participation in planning or monitoring strategies to protect IDPs.<sup>420</sup> Furthermore, as the role of the civil society becomes progressively more crucial, freedom of expression and information in the country is decreasing since the beginning of the conflict.<sup>421</sup> Journalist attacks have been recorded and Instituto para a Comunicação Social da África Austral has showed concern in the absence of interest in conducting investigations.<sup>422</sup>

#### 4.1.4 African Union's obligations and action

Taking into consideration the Constitutive Act of the AU and the Kampala Convention, it is imperative to mention the obligations of the continental Organization towards IDPs. The constitutional act, in its Article 4 (h), establishes the right of the Union to intervene in the occurrence of 'grave circumstances, namely: war crimes, genocide and crimes against humanity'.<sup>423</sup> Additionally, article 4 (j) entitles the state with the right to 'request intervention from the Union in order to restore peace and security'.<sup>424</sup> In accordance with the legal options mentioned, Kampala's convention article 8 confirms this right and duty

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<sup>418</sup> Ian Leme Scott, 'Projeto apoia deslocados internos em Cabo Delgado e oferece alternativa econômica e social' *MigraMundo* (16 August 2021) <<https://migramundo.com/projeto-apoia-deslocados-internos-em-cabo-delgado-e-oferece-alternativa-economica-e-social/>> accessed 4 July 2022; 'Sociedade Civil Cria Centros Seguros Para Apoio de Mulheres Deslocadas' (17 March 2022) <<https://evidencias.co.mz/2022/03/17/sociedade-civil-cria-centros-seguros-para-apoio-de-mulheres-deslocadas/>, <https://evidencias.co.mz/2022/03/17/sociedade-civil-cria-centros-seguros-para-apoio-de-mulheres-deslocadas/>> accessed 4 July 2022.

<sup>419</sup> Agência Lusa, 'Moçambique. Sociedade civil moçambicana "exige" que Presidente acione pedido de apoio internacional' *Observador* (31 March 2021) <<https://observador.pt/2021/03/31/mocambique-sociedade-civil-mocambicana-exige-que-presidente-acione-pedido-de-apoio-internacional/>> accessed 4 July 2022.

<sup>420</sup> Lusa, 'ONG Acusa Governo de Excluir Sociedade Civil Em Programa Para Desenvolvimento' *RTP* (23 June 2022) <[https://www.rtp.pt/noticias/mundo/ong-acusa-governo-de-excluir-sociedade-civil-em-programa-para-desenvolvimento\\_n1414864](https://www.rtp.pt/noticias/mundo/ong-acusa-governo-de-excluir-sociedade-civil-em-programa-para-desenvolvimento_n1414864)> accessed 4 July 2022.

<sup>421</sup> Raquel Loureiro, 'Guerra em Cabo Delgado prejudica liberdade de imprensa em Moçambique' *Deutsche Welle* (3 May 2022) <<https://www.dw.com/pt-002/guerra-em-cabo-delgado-prejudica-liberdade-de-imprensa-em-mo%C3%A7ambique/a-61675047>> accessed 4 July 2022.

<sup>422</sup> *ibid.*

<sup>423</sup> Organization of African Unity (OAU) 'Constitutive Act of the African Union' (adopted in 1 July 2000, entered in force 26 May 2001) art 4.

<sup>424</sup> Constitutive Act of the African Union (n 424).

of the Union, in the specific scenario of internal displacement.<sup>425</sup> Article 8 (3) introduces further obligations such as the strengthen of the institutional framework, coordination of resource mobilization for protection and assistance of IDPs, cooperation with international organizations and civil society, among others.<sup>426</sup>

However, despite having this legally-binding obligations, the African system, in accordance with Article 4 (4) of the Memorandum on cooperation in the area of peace and security, is subjected to the principles of subsidiarity, complementary and comparative advantage.<sup>427</sup> In this light, the African Union ‘should have a subsidiary function in carrying out only those tasks that cannot be done effectively at a more immediate or local level’.<sup>428</sup> Consequently, if the Regional Economic Communities (RECs) can deal with the conflict it should be the case. However, not only should there be complementarity and support from the continental Union, but also the intervention if the RECs are unable to act on the situation.<sup>429</sup> Bearing these factors in mind, the intervention is deferred to the Southern African Development Community (SADC).<sup>430</sup>

### **SADC’s actions**

Strictly following the subsidiary principle, SADC has been the main African actor in the supporting against the terrorist threat. In July 2021, forces were stationed in Cabo Delgado in the implementation of the SADC’s Southern African Mission in Mozambique (SAMIM).<sup>431</sup> Additionally, in June 2022, the regional community started the implementation of a Peace Building Support Program ‘aimed at enhancing social protection mechanisms, law and order, humanitarian assistance and capacity building initiative’.<sup>432</sup> Besides the actions of SADC, the AU has contributed monetarily not only to the program for rebuilding the northern region, but also supporting SAMIM and

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<sup>425</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (n 105) art 8.

<sup>426</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (n 105).

<sup>427</sup> African Union ‘Memorandum of Understanding on Cooperation in the area of Peace and Security between the African Union, the Regional Economic Communities and the Coordinating Mechanisms of The Regional Standby Brigades of Eastern Africa and Northern Africa’ (2012) art 4.

<sup>428</sup> ECCAS and CMI, ‘The Principle of Subsidiarity The Example of ECCAS in the Central African Crisis’ (2017) <[https://cmi.fi/wp-content/uploads/2017/03/Principle\\_of\\_Sub subsidiarity\\_ECCAS\\_CMI\\_English.pdf](https://cmi.fi/wp-content/uploads/2017/03/Principle_of_Sub subsidiarity_ECCAS_CMI_English.pdf)>.

<sup>429</sup> *ibid* 8.

<sup>430</sup> PSC REPORT, ‘What Can the AU Do about the Conflict in Mozambique?’ (*ISS Africa*, 26 March 2021) <<https://issafrica.org/pscreport/psc-insights/what-can-the-au-do-about-the-conflict-in-mozambique>> accessed 7 July 2022.

<sup>431</sup> Andrew Cheatham, Amanda Long and Thomas Sheehy, ‘Regional Security Support: A Vital First Step for Peace in Mozambique’ (*United States Institute of Peace*, 23 June 2022) <<https://www.usip.org/publications/2022/06/regional-security-support-vital-first-step-peace-mozambique>> accessed 8 July 2022.

<sup>432</sup> SADC, ‘SADC Begins Peace Building Support Programme in Northern Mozambique’ *Southern African Development Community* (24 June 2022) <<https://www.sadc.int/news-events/news/sadc-begins-peace-building-support-programme-northern-mozambique/>> accessed 8 July 2022.

Mozambican troops.<sup>433</sup> SADC has officially requested financial help from the Union revealing an evolution in the ‘historical mistrust of the AU and its insistence on the principle of subsidiarity’.<sup>434</sup>

Despite being criticized by the lack of cooperation and communication with the Rwandan forces, SAMIM has revealed positive improvements in the security department. In this context, the military intervention of SADC and the projects implemented are a deferred, according to principle of subsidiarity, compliance with the standards. However, if the SADC does not achieve the peace and security goals proposed, an active and direct intervention of the African Union might be required.

## **4.2 Violations of the right to education by the State of Mozambique**

In this section, following the analysis of the State obligations and the measures taken to realize the right to education, the compliance with the standards is directly examined.

### **Obligation to respect the right to education**

The state and public entities have the obligation to respect the IDCs’ right to education. Consequently, the state has the duty, to abstain from an interference that does not pursue a legitimate aim or is not proportional. However, through military action, the State has unlawfully interfered in the realization of the IDCs’ right. Firstly, the reports of HRW reveal that thousands of civilians have been prevented from fleeing Cabo Delgado and that severe human rights abuses were committed.<sup>435</sup> Prohibiting civilians, including children from moving to an area where schools are guaranteed, opposed to Cabo Delgado, directly affects the right to education of IDCs. Moreover, the insecurity generated by the military actions can lead to the distrust of parents and children in the public authorities and increase absences and drop-out rates. Finally, organizations have reported obstacles and restrictions that governmental authorities create and diminish the impact of humanitarian aid, in which educative temporary resources are provided.<sup>436</sup> Regardless of having a theoretical legitimate aim in fighting terrorism, the interference with the IDCs’

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<sup>433</sup> Liesl Louw-Vaudran, ‘SADC and Rwanda Shouldn’t Go It Alone in Mozambique’ (*ISS Africa*, 11 April 2022) <<https://issafrica.org/iss-today/sadc-and-rwanda-shouldnt-go-it-alone-in-mozambique>> accessed 8 July 2022.

<sup>434</sup> *ibid.*

<sup>435</sup> ‘Mozambique: Civilians Prevented from Fleeing Fighting’ (Human Rights Watch 2021) <<https://www.hrw.org/news/2021/08/06/mozambique-civilians-prevented-fleeing-fighting>> accessed 4 July 2022.

<sup>436</sup> *ibid.*; Jonathan Whittall, ‘Focus on Fighting Terrorists Ignores Humanitarian Needs in Mozambique | MSF’ (*Médecins Sans Frontières (MSF) International*, 14 May 2021) <<https://www.msf.org/focus-fighting-terrorists-ignores-humanitarian-needs-mozambique>> accessed 5 July 2022.

right to education does not obey to the requirement of proportionality, considering the existence of multiple effective and less damaging means to pursue that goal.

### **Obligation to protect the right to education**

Mozambique's authorities have equally failed to protect the right to education for IDCs. The state has not managed to maintain security and protect education facilities in the northern regions.<sup>437</sup> The attacks and consequent destruction of schools are a clear evidence of the failure to comply with the obligation to protect from third party interference. In addition to the schools destroyed, due to the absence of security, professors have been targeted and killed, affecting the human resources available.<sup>438</sup> As a consequence of the inexistent protection, in some cases, professors have also contested the orders to return to their work.<sup>439</sup> It is estimated that in January of 2022, in Cabo Delgado 183 schools were unable to open due to damage or insecurity.<sup>440</sup> The state has not protected children from kidnapping and sexual abuse, realities that naturally prejudice their right to education.<sup>441</sup> In addition to that, Mozambique has been unable to protect IDCs from premature and forced marriage, a harmful practice that has been growing among the displaced and is generally harmful to the child's educative perspectives.<sup>442</sup>

It is imperative to accept that an armed conflict is always a complicated situation to tackle and a difficult scenario for children's' rights protection. Nevertheless, the state of Mozambique is directly responsible for the failure of the military intervention, due to the corruption present, the late and imprecise request for international help and the incompetence in coordinating the different forces. Moreover, the government has not implemented any measures to establish cooperation with the armed group in order to secure the population. Considering the current presence of 24 states supporting the

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<sup>437</sup> Lusa, 'Cabo Delgado' (n 388); Agência Lusa, 'Cabo Delgado: Mais de 120 mil alunos afetados por ataques em 2021' *Deutsche Welle* (14 January 2022) <<https://www.dw.com/pt-002/cabo-delgado-mais-de-120-mil-alunos-afetados-por-ataques-em-2021/a-60426719>> accessed 5 July 2022.

<sup>438</sup> Lusa, 'Pelo menos oito professores mortos e mais de 120 mil alunos afetados em 2021 em Cabo Delgado' *Rádio e Televisão Portuguesa* (14 January 2022) <[https://www.rtp.pt/noticias/mundo/pelo-menos-oito-professores-mortos-e-mais-de-120-mil-alunos-afetados-em-2021-em-cabo-delgado\\_n1376856](https://www.rtp.pt/noticias/mundo/pelo-menos-oito-professores-mortos-e-mais-de-120-mil-alunos-afetados-em-2021-em-cabo-delgado_n1376856)> accessed 5 July 2022.

<sup>439</sup> Agência Lusa, 'Cabo Delgado: Professores contestam ordem de regresso às escolas' *Deutsche Welle* (13 July 2021) <<https://www.dw.com/pt-002/cabo-delgado-professores-contestam-ordem-de-regresso-%C3%A0s-escolas/a-58255116>> accessed 5 July 2022.

<sup>440</sup> Lusa, 'Terrorismo impede abertura de um quinto das escolas de Cabo Delgado' *DW.COM* (25 January 2022) <<https://www.dw.com/pt-002/terrorismo-impede-abertura-de-um-quinto-das-escolas-de-cabo-delgado/a-60545452>> accessed 5 July 2022.

<sup>441</sup> Human Rights Watch, 'Moçambique: Centenas de mulheres e meninas raptadas' (*Human Rights Watch*, 9 December 2021) <<https://www.hrw.org/pt/news/2021/12/09/380635>> accessed 5 July 2022.

<sup>442</sup> 'Rates of Child Marriage Double amongst Thousands of Children Displaced by Conflict in Cabo Delgado' (n 9).

military efforts, it is inexcusable the lack of coordination, the absence of cooperative policies and it is consequently impossible to justify the continuation of lethal attacks.<sup>443</sup>

### **Obligation to ensure free and compulsory primary education**

Regarding primary education, Mozambique does not comply with the immediate obligation to provide free and compulsory education for IDCs. The violation of this obligation is a result of a multiplicity of factors.

Firstly, there are no schools with quality infrastructure available for all IDCs. According to UNICEF, the number of children out of school reaches 200,000.<sup>444</sup> Secondly, there is no protection from school attacks and the State does not provide accessible facilities to all IDCs contemplating secure paths to reach them. Thirdly, when the access to school is provided, some children have experienced long periods until integration in the place of settlement.<sup>445</sup> Furthermore, despite having access to school facilities, the State fails, in many scenarios, to ensure the inexistence of indirect costs that do not allow a child to remain in school.<sup>446</sup>

The acceptability criterion is not fulfilled since the schools located in safe zones present signals of being overcrowded.<sup>447</sup> Moreover, to be acceptable in the context of internal displacement, education must be in the language of the vulnerable groups. According to the Plan International Mozambique's report, the state has not ensured that education is linguistically appropriate for all IDCs, since in some areas the Emakua and other local languages are used instead of Portuguese.<sup>449</sup>

### **Obligations towards secondary and higher education**

In the context of secondary and higher education, the obligations are weaker since Mozambique is only obliged to take all appropriate measures to progressively achieve availability and accessibility. Therefore, restrictions of secondary and higher-level education are, in the context of a conflict, easily justified by the lack of resources. In this

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<sup>443</sup> Lusa, 'Cabo Delgado' (n 389).

<sup>444</sup> Lusa, 'Cabo Delgado: Falta ajuda humanitária para crianças voltarem às escolas, alerta UNICEF' *Deutsche Welle* (11 May 2022) <<https://www.dw.com/pt-002/cabo-delgado-falta-ajuda-humanit%C3%A1ria-para-crian%C3%A7as-voltarem-%C3%A0s-escolas-alerta-unicef/a-61756285>> accessed 5 July 2022.

<sup>445</sup> Hizidine Achá, 'Alunos deslocados para Pemba ainda sem aulas - O País - A verdade como notícia' *O País* (15 April 2021) <<https://www.opais.co.mz/alunos-deslocados-para-pemba-ainda-sem-aulas/>> accessed 5 July 2022.

<sup>446</sup> Nina Yengo and Lídia Langa, 'Rapid Gender Analysis in Response to IDPs in Cabo Delgado and Nampula Provinces' (Plan International Mozambique 2022) 9.

<sup>447</sup> Lusa, 'Terrorismo impede abertura de um quinto das escolas de Cabo Delgado' (n 441).

<sup>448</sup> Yengo and Langa (n 447) 9.

light, and considering the lack of precise information, it is impossible to conclude for the non-compliance with the obligations regarding secondary and higher-education.

### **Obligation to reduce drop-out rates and encourage attendance**

The Mozambican State has also violated the obligation to take all appropriate measures to reduce drop-out rates and encourage attendance. This results from the lack of efficiency in guaranteeing security, considering the international help and the available resources wasted on practices of corruption. In addition to that, the government has been responsible of increasing drop-out rates by generating violence, insecurity and not allowing movement. Furthermore, the government did not undertake all appropriate measures to guarantee that bureaucratic practices were abolished and facilitate the intervention of the organizations. The lack of humanitarian aid, in the form of food and health care are extremely important for the constant presence in educative institutions.

Therefore, one must conclude that with the resources available, the State of Mozambique had the possibility to undertake different decisions and further reduce drop-out rates while encouraging attendance.

### **Obligation to request international help**

Regarding the request for international help, an obligation made clear by the CRC Committee, the state of Mozambique should demonstrate that it has ‘made every effort to seek and implement international cooperation to realize the rights of the child’.<sup>450</sup> The State of Mozambique violated this obligation due to its deficit in proactivity to request for concrete help. Another contributing factor for the violation is the unreasonable and unjustified delay to approve the plans that would allow rapid international financial support. One must not forget that public authorities have failed to facilitate action in the field maintaining ‘bureaucratic hurdles impeding the importation of certain supplies and the issuing of visas for additional humanitarian workers’.<sup>451</sup> Finally, the realization of the children’s rights has not been the priority on the allocation of resources, that has been focused on stopping terrorism among other objectives.<sup>452</sup>

### **Obligation to ensure psychosocial education for every IDC**

The ACPHR also obliges, in accordance with the African Commission, the provision of psychosocial education within the free and compulsory basic education for vulnerable children.<sup>453</sup>

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<sup>450</sup> UNCRC ‘General comment No. 19 (2016) on public budgeting for the realization of children’s rights (art. 4)’ (n 239).

<sup>451</sup> Whittall (n 437).

<sup>452</sup> *ibid*; Agência Lusa, ‘ONG diz que governo moçambicano falhou no apoio a deslocados’ *Notícias ao Minuto* (12 April 2021) <<https://www.noticiasao minuto.com/mundo/1730157/ong-diz-que-governo-mocambicano-falhou-no-apoio-a-deslocados>> accessed 6 July 2022.

<sup>453</sup> African Commission on Human and Peoples’ Rights ‘Pretoria Declaration on Economic, Social and Cultural Rights in Africa (2004)’ (Pretoria 2004) para 8.

The primary education curriculum of the Mozambican State does not include this educative modality.<sup>454</sup> However, the government has taken sporadic measures to provide support in the response to the natural disasters and the conflict, through psychosocial training for the teachers and supporting the communities.<sup>455</sup>

Nonetheless, this reality needs to be implemented on a generic level and reach every IDC. Since the psychosocial education should be included in the primary education and be accessible to all children, one must conclude that the State has not complied with its obligation. The IOM and MSF emphasize the extreme necessity for the state to ensure psychosocial support for the vulnerable group, and recognized it as a fundamental tool.<sup>456</sup>

### **Obligation to not discriminate IDCs in the realization of their right to education**

Despite being applied the same laws on education, the obligation of non-discrimination for the IDCs' right to education must respect substantive equality and set up a level playing field. The State of Mozambique has violated this obligation, since health conditions and malnutrition are affecting, according to UNICEF, more than half a million children.<sup>457</sup> The lack of existence of these basic needs for IDCs deeply affects their enjoyment of the right to education.

Additionally, reports show that, in some areas, IDCs might face language barriers and school stigma.<sup>458</sup> Moreover, due to their conditions, IDCs have faced difficulties in supplying documentation and consequently, have been challenged in enrolling in education institutions.<sup>459</sup> For the reasons mentioned, the State of Mozambique has not been able to establish equality in conditions for the vulnerable group and therefore does not comply with the obligation to not discriminate.

### **State violations concerning IDGs**

The CEDAW Committee has expressed the necessity to achieve equality *de facto* proved in results. In this light, Mozambique has developed policies towards mitigating the discrimination on the right to education. In the strategic plan for education, the State included the adoption of measures to reduce the absence and drop-out rates for girls,

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<sup>454</sup> Instituto Nacional de Desenvolvimento da Educação, 'Plano Curricular Do Ensino Primário'.

<sup>455</sup> República de Moçambique, 'Plano Estratégico de Educação (2020-2029) 23ª Reunião Anual de Revisão, 2022' (n 360) 88.

<sup>456</sup> Lusa, 'Deslocados de Cabo Delgado têm transtornos psicológicos acumulados, diz ONG' *Deutsche Welle* (30 August 2021) <<https://www.dw.com/pt-002/deslocados-de-cabo-delgado-t%C3%A4Am-transtornos-psicol%C3%B3gicos-acumulados-diz-ong/a-59028101>> accessed 5 July 2022; Nações Unidas Brasil, 'Das 800 mil pessoas deslocadas pelo conflito em Cabo Delgado, metade são crianças' (*Nações Unidas Brasil*, 20 August 2021) <<https://brasil.un.org/pt-br/140990-das-800-mil-pessoas-deslocadas-pelo-conflito-em-cabo-delgado-metade-sao-criancas>, <https://brasil.un.org/pt-br/140990-das-800-mil-pessoas-deslocadas-pelo-conflito-em-cabo-delgado-metade-sao-criancas>> accessed 5 July 2022.

<sup>457</sup> UNICEF (n 6) 2.

<sup>458</sup> Yengo and Langa (n 447) 9.

<sup>459</sup> Protection Cluster Mozambique (n 396) 2.

through the combat of GBV, forced marriage and premature pregnancy.<sup>460</sup> Although gender concerns were addressed, no measures for reducing gender inequality are registered for the specific scenario of displacement.<sup>461</sup>

The Government also acted in the legal sphere prohibiting premature marriage (below the age of 18) in 2019.<sup>462</sup> However, according to Plan International it is hard to make communities understand this legal solution.<sup>463</sup> Furthermore, USAID highlights that the legal prohibition ‘is not well known nor enforced’, a concerning reality since according to the organization, in ‘Cabo Delgado early marriage is a leading cause of school drop-out among adolescent girls’.<sup>464</sup> In the conflict regions and amongst IDPs, forced and premature unions are a common reality, that has been increasing since the beginning of the conflict.<sup>465</sup> Additionally, reports of abusive conduct by the intimate partners are equally common in the conflict area.<sup>466</sup>

Early pregnancy rates are naturally an increasing concern as a consequence of early marriage. The region of Cabo Delgado had already an enormous percentage of early pregnancy (‘65% of adolescents aged 15-19 are already mothers or pregnant’), a phenomenon that the State fails to combat.<sup>467</sup>

Another source of GBV is ‘sexual exploitation and abuse in the context of food distributions and other humanitarian assistance’.<sup>468</sup> Amnesty International highlights that ‘violence against women and girls remained rampant, with few measures taken to hold perpetrators accountable’.<sup>469</sup> Kidnappings of girls conducted by the insurgent group are a constant reality that the Mozambican authorities have not managed to prevent.<sup>470</sup>

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<sup>460</sup> Ministério da Educação e Desenvolvimento Humano (n 118) 80.

<sup>461</sup> República de Moçambique, ‘Plano Estratégico de Educação (2020-2029) 23ª Reunião Anual de Revisão, 2022’ (n 360).

<sup>462</sup> Lei 19/2019 de 22 de Outubro BR I Série- Número 203

<sup>463</sup> Marta Cardoso, ‘Moçambique: Lei que proíbe casamentos de menores completa um ano’ *Deutsche Welle* (18 July 2020) <<https://www.dw.com/pt-002/mo%C3%A7ambique-lei-que-pro%C3%ADbe-casamentos-de-menores-completa-um-ano/a-54227492>> accessed 6 July 2022.

<sup>464</sup> USAID, ‘Preventing Child and Early Forced Marriage in Cabo Delgado’ (USAID 2021) 1 <<https://www.usaid.gov/mozambique/documents/preventing-child-and-early-forced-marriage-cabo-delgado>>.

<sup>465</sup> ‘Rates of Child Marriage Double amongst Thousands of Children Displaced by Conflict in Cabo Delgado’ (n 9).

<sup>466</sup> UNHCR Mozambique/Sub Office Pemba, ‘Gender-Based Violence (GBV) Incidents Trends Analysis-Cabo Delgado | July – December 2021’ (UNHCR Mozambique 2021) <<https://data.unhcr.org/en/documents/details/93324>>.

<sup>467</sup> ‘Rates of Child Marriage Double amongst Thousands of Children Displaced by Conflict in Cabo Delgado’ (n 9).

<sup>468</sup> Mariana Pinto, ‘Conflict Sensitive Rapid Gender Analysis Cabo Delgado, Mozambique’ (Care Mozambique 2022) 2.

<sup>469</sup> ‘Mozambique Archives’ (*Amnesty International*) <<https://www.amnesty.org/en/location/africa/southern-africa/mozambique/report-mozambique/>> accessed 6 July 2022.

<sup>470</sup> Human Rights Watch (n 442).

Additionally, girls are more likely to drop-out of school due to their cultural role, namely the 'need to dedicate themselves to other tasks'.<sup>471</sup> This effect has been amplified by the displacement, since many women report that 'domestic activities have increased since they live in host families'.<sup>472</sup>

In this context, it is naturally verifiable that the State has failed to comply with the obligation to protect the equality in the enjoyment of the right to education for IDGs. Firstly, the State has failed to protect IDGs from sexual violence, kidnappings and early marriage while not being able to provide counselling from victims of such abuses.<sup>473</sup> Secondly, Mozambique fails to protect IDGs from discriminatory familiar or habitational roles that interfere with the exercise and enjoyment of their right to education.

Regarding the obligation to ensure equality of results in the recognition, exercise and enjoyment of the right to education it is clear that the *de facto* situation for IDGs is not equal. In conclusion, the State has failed to implement effective policies to tackle GBV and guarantee security to achieve equality in the practical enjoyment of the right.

#### **4.3 Justiciability of the right to education:**

Justiciability, according to the Black Law Dictionary, refers to the 'capacity to claim a right before a tribunal'.<sup>474</sup> Therefore, in order to be judiciable, the right to education has to include the ability to seek for a remedy in a judicial or quasi-judicial bodies when a violation occurs.<sup>475</sup> These bodies are differentiated since the 'decisions of quasi-judicial bodies are not directly enforceable'.<sup>476</sup>

To verify the justiciability of the IDGs' right to education in Mozambique, one must analyze the international, regional and national bodies available.

The right to education is established in the 88<sup>th</sup> article of the Mozambican Constitution as a right of every citizen, and the law on the national education system provides free and compulsory primary education.<sup>477</sup> Additionally, article 70 of the Constitution provides that every citizen has the right to access the judicial route against acts that violate the rights

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<sup>471</sup> Yengo and Langa (n 447) 9.

<sup>472</sup> *ibid* 1.

<sup>473</sup> Lusa, 'Mozambique: More Action Needed to Defend Women in Cabo Delgado Conflict - NGO' *Macau Business* (4 July 2022) <<https://www.macaubusiness.com/mozambique-more-action-needed-to-defend-women-in-cabo-delgado-conflict-ngo/>> accessed 6 July 2022.

<sup>474</sup> 'Justiciability Definition & Meaning - Black's Law Dictionary' (*The Law Dictionary*, 11 October 2010) <<https://thelawdictionary.org/justiciability/>> accessed 9 July 2022.

<sup>475</sup> Fons Coomans, 'Justiciability of the Right to Education' (2009) 2 *Erasmus Law Review* 427, 1.

<sup>476</sup> Human Rights Council, 'Report of the Special Rapporteur on the right to education, Kishore Singh Justiciability of the right to education' (2013) para 39.

<sup>477</sup> *Constituição da República de Moçambique* (n 107) art 88 ; *Decreto-lei 79/2019* (n 120).

in the Constitution or in the law.<sup>478</sup> Therefore, in theory, the right to education for IDCs is justiciable in the national Courts.

However, one must consider the inexistence of jurisprudence on the topic by the local bodies and the Supreme Court.<sup>479</sup> In addition to that, corruption, the inexistence of courts near a large part of the population and the excessive onerous process are highlighted as barriers to the effectiveness of Justice by Flávio Menete.<sup>480</sup> Another concerning factor is the low number of lawyers available and their concentration in the capital.<sup>481</sup> Furthermore, one must consider the lack of resources that IDPs possess, and the difficulty in finding the financial and technical support to effectively pursue the judicial route. Loss of documents, language barriers, and the destruction of institutions might equally contribute for the impossibility of accessing the judicial bodies. Finally, the unreasonable longevity of the processes, might result in the worsening of the IDPs' situation, not only due to the costs, but also considering the years lost in a child's educative process.

The constitution also establishes the Ombudsperson, an quasi-judicial body responsible for the guarantee of the citizens' rights.<sup>482</sup> Despite not having deciding power, the Ombudsperson produces recommendations for repairing and preventing illegalities and injustice.<sup>483</sup>

On the regional level, the African system sets, in Article 55 of the Banjul Charter, that the African Commission as a quasi-judicial body can be addressed under the format of a communication.<sup>484</sup> This communication can be made by an individual or an organization. However, domestic remedies must be exhausted, if available and not excessively prolonged.<sup>485</sup> Since this procedure has not occurred for the article 17 of the Charter, despite being theoretically an option, it is not realistic to assume its occurrence in the near future.

The Protocol to the Banjul Charter establishes the African Court on Human and People's Rights.<sup>486</sup> Nonetheless, for IDPs to access the Court, the case has to be submitted by the

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<sup>478</sup> *Constituição da República de Moçambique* (n 107) art 70.

<sup>479</sup> 'Acordãos Do Tribunal Supremo' (*Tribunal Supremo*)

<<http://www.ts.gov.mz/index.php/pt/jurisprudncia/acordaos-do-tribunal-supremo>> accessed 9 July 2022.

<sup>480</sup> Flávio Menete, 'Acesso à Justiça - Perspectiva Nacional e Internacional' (Comemoração do 90-º Aniversário da Ordem dos Advogados Portugueses, Cascais, 2016) <<https://www.oam.org.mz/wp-content/uploads/2016/08/DISCURSOIB.pdf>>.

<sup>481</sup> Omardine Omar, 'Acesso à justiça em Moçambique ainda continua "uma miragem", conclui OAM' *Carta de Moçambique* <<https://cartamz.com/index.php/sociedade/item/2655-acesso-a-justica-em-mocambique-ainda-continua-uma-miragem-conclui-oam>> accessed 9 July 2022.

<sup>482</sup> *Constituição da República de Moçambique* (n 107) art 256.

<sup>483</sup> *Constituição da República de Moçambique* (n 107) art 259.

<sup>484</sup> African Charter on Human and Peoples' Rights (n 277) art 55.

<sup>485</sup> African Commission on Human and Peoples' Rights, 'Information Sheet NO.3 - Communication Procedure Organisation of African Unity' <[https://www.achpr.org/public/Document/file/English/achpr\\_communication\\_procedure\\_eng.pdf](https://www.achpr.org/public/Document/file/English/achpr_communication_procedure_eng.pdf)>.

<sup>486</sup> Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted in 10 June 1998, entered in force 25 February 2004) art 1.

Commission, State Parties or African Intergovernmental Organizations.<sup>487</sup> This is a consequence of the non-ratification of the Protocol's article 34(6) by the state of Mozambique that would allow direct access to individuals and organizations.<sup>488</sup>

Finally, the international system does not include a judicial body. However, the treaty bodies of the conventions are quasi-judicial entities that can receive individual communications. Considering the right to education, the CDESCR and the CRC Committee are both excluded from the quasi-judicial protection for IDPs in Mozambique. This is a consequence of Mozambique not being a State-party of the ICESCR and due to the non-ratification of the CRC optional protocol on individual complaints. In this light, the bodies that could receive complaints by individuals are the CEDAW Committee and the CRPD Committee. Naturally, this reality is very restrictive since both conventions mainly target discrimination on education.

In this context, one must conclude that the right, in the theory, is justiciable. Nevertheless, it is imperative to highlight, that there is no precedent in the national, regional and international systems of a judicial or quasi-judicial decision on the right to education concerning the State of Mozambique. Naturally, it is not realistic to assume that these mechanisms are relevant enforcement tools.

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<sup>487</sup> Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (n 487) art 5.

<sup>488</sup> Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (n 487) art 5, 34.

## Conclusion

This research aimed at verifying if the State of Mozambique is complying with its obligations on the right to education, and consequently understand if the IDCs' right to education is being fully realized. By conducting a deep legal analysis of the obligations in the human rights norms and examining the measures taken by the African State to comply with them, the conclusion of this research can only go in one direction. The IDCs' right to education is not being fully realized and the State is not complying with the international, regional, and domestic standards. The State has failed to respect, protect the right. Moreover, Mozambique has been unable to ensure free and compulsory education for the IDCs and create a level playing field for the enjoyment of the right. The inequality is aggravated for girls' education, which are severely affected by GBV and familiar practices. Furthermore, the State has not complied with the obligation to seek for international help and facilitate the realization of the right while not ensuring the access to psychosocial education for all IDCs.

The research further concludes that, despite the theoretical possibility, due to the judicial inefficiency, lack of infrastructure and resources to provide an equal access to justice, there is no realistic remedies available. Considering that 'no right can exist without a remedy', the lack of justiciability further increases the difficulties for IDCs to properly enjoy the right.<sup>489</sup>

On the other hand, this research contributed to the understanding of the failed action of the State of Mozambique. By analyzing the educational policies, it argues that the State has failed due to not recognizing the necessity to address the particularities of the right to education for IDCs. Additionally, concludes that the State has had an insufficient action towards humanitarian help, due to the focus on combating the insurgent threat. Finally, it argues that corruption has impacted the efficiency of the military and humanitarian intervention.

However, the research, due to the legal approach, is unable to address the consequences of the non-realization of the right. Therefore, future research is required to comprehend the impact that the lack of education will have in the socio and psychological development of the children. Additionally, and considering the connection between education and poverty, researchers could focus on the impact of this phenomenon in the economic collapse of the region and increase of poverty rates. Furthermore, due to the lack of data, the project was incapable of covering the discrimination towards displaced children with disabilities.

Despite facing limitations, the research contributes to the knowledge by tackling the humanitarian crisis in Mozambique, a topic with scarce academic focus. Moreover, this

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<sup>489</sup> Katarina Tomaševski, 'Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable' [2001] Right to Education Primers No. 3 8.

project introduces a HRBA to the conflict, contrasting with the existing and dominant literature targeting the combat to the insurgent threat. In this context, identifying the non-compliance with the obligations improves the State's accountability. Finally, the covering of the reasons for the failure in realizing the right to education and the subsequent recommendations presented can increase the efficiency in ensuring the right in practice.

### **Recommendations:**

#### **Compliance with the standards:**

It is severely recommended that the state of Mozambique complies with the international, regional and national standards. Therefore, the state must:

- Abstain from interfering in the right to education for IDCs unless a legitimate aim and the criterion of proportionality are met.
- Protect the enjoyment of IDC's right from the armed group interference and from cultural or social practices that prevent children from attending educative institutions.
- Ensure immediately the accessibility, availability, adaptability and acceptability of free and compulsory primary education for all IDCs while guaranteeing psychosocial education in the curriculum.
- Guarantee, in accordance with the principle of non-discrimination, and attending to the concept of substantive equality, that IDCs have a level playing field and equality of results in accessing the right to education.
- Take all the appropriate measures to reduce drop-out rates and ensure school attendance.
- Protect IDGs from gender-based discrimination through eradicating GBV and familiar practices that affect IDGs' enjoyment of the right to education.
- Ensure substantive equality in the recognition, enjoyment and exercise of the right for IDGs considering the necessity for equal results.

In order to achieve the compliance with the standards, several practices and policy modifications are recommended in this section.

#### **Ratification of international and regional treaties:**

Firstly, the State of Mozambique is highly recommended to ratify the ICESCR. To protect IDCs' right to education, regardless of the CRC ratification, another layer of protection is always relevant. Moreover, considering the impact that the CESCR has had in concretizing obligations and interpreting the scope of the right, it is crucial that Mozambique ratifies the optional protocol on communication procedures.

In the same line of thought, it is equally fundamental that Mozambique ratifies the individual complaint protocol of the CRC. That step would allow the CRC Committee to guide the State through specific orientated recommendations according to the best

interests of the child and respecting the child's views. Within the international framework it is further recommended that Mozambique ratifies the UNESCO convention against discrimination in education.

Regarding the regional framework, despite the high percentage of ratifications, Mozambique is recommended to accept the direct jurisdiction of the African Court by signing and depositing the acceptance of article 34 paragraph 6 of the Protocol to the Banjul Charter. This step would allow individuals and NGOs direct access to the Court and improve, accountability and justiciability.

### **Recognition of the IDCs special necessities in general policies:**

To coordinate efforts and concretize policies, the general programs of the state must recognize and address IDPs as a vulnerable group with special necessities. Therefore, it is recommended that:

- In the following years, the annual national budget includes the specific funds available to realize the IDPs necessities. That reference should determine the financial margin for Política de Gestão dos Deslocados Internos in order to diminish the discrimination of the entities responsible for the implementation. Despite being relatively simple to concretize, this measure would ensure that a certain amount of resources are channeled to IDPs.
- The government reinforces temporarily the annual budget for the most affected regions, including as distribution criteria the damages originated from natural disasters and by the insurrection conflict.
- The strategic plan for education (in force until 2029) is completed to include a section in which specific measures are planned to respond to the necessities of IDCs. Among other policies, addressing psychosocial education for every IDC and special policies to eliminate indirect cost should be the focus.
- The government and local authorities allow and encourage further civil society participation in discussions and policymaking.
- The government elaborates a long-term plan for the IDPs' settlement considering their educative needs. The project should ensure that IDPs are accommodated in areas with sufficient schools, to prevent overcrowded institutions and ensure a reasonable number of students per professor.

### **International policy:**

Towards the improvement of the international support and efficiency in realizing the right to education of IDCs, the state is recommended to take the following measures:

- Immediately reform and eliminate any form of bureaucratic unnecessary obstacles for humanitarian intervention. To achieve that, the state must facilitate the access to visas for humanitarian workers and avoid restrictions on the importation of

supplies. Additionally, any restrictions on direct allocation of resources or contact with the communities should be eliminated.

- Have an assertive and coherent policy in the request for international aid. That implies the organization of concrete plans with transparent mechanisms to attract foreign support. The government, the media and civil society should cooperate to collect accurate data and inform the world about the crisis and the humanitarian necessities. Considering the current developments in international relations, it is pivotal that the Mozambican entities remain active to ensure the IDPs' crisis is not forgotten as other humanitarian catastrophes gather international attention.
- Impede that political procedures and decisions delay unnecessarily or diminish the international cooperation.
- Undertake a politically stronger position and lead the efforts towards a cooperative policy between the African Union and the SADC to achieve effectiveness in the military and humanitarian support.

### **Reduce the corruption effects and increase transparency:**

Corruption is a common reality in the allocation of funds in Mozambique. Considering the multiple denounces of corruptive behavior in the humanitarian aid and even in the distribution of resources per region, it is recommended that:

- The law on Política de Gestão dos Deslocados Internos should be emended to ensure an effective mechanism of monitorization. The reformulation shall include the creation of an entity independent from INGD to guarantee an objective monitorization. The civil society should work closely in monitoring and should be included in the practical allocation of resources to the community. An equal monitoring system should be created for the program of recuperation of the northern region, since the allocation of 2,500,000,000USD can have an unprecedented impact in the region.
- The interests of the large gas companies involved in the exploration of Cabo Delgado should not be considered in the allocation of resources. To ensure this, the state should elaborate objective criteria for the distribution of resources, especially in Plano de Reconstrução de Cabo Delgado. The distribution of funds per district should consider the damages reported and the number of IDPs currently in the territory while not disregarding the overall population number and poverty levels.
- The authorities should investigate deeply the denounces of corruption presented by civil society and take action to avoid the perpetuation of corruptive practices.

To achieve transparency and trust in the public entities it is proposed that:

- The government discloses the details of the Rwandan military intervention, namely the financial investment involved. Additionally, in the following years' annual budget, the financial resources available to combat the terrorist threat should be included.
- The government should improve the communication with IDPs about the reality of the conflict and ease the access and collection of data by civil society and the Media.
- Authorities should promote participation of IDPs in the decision-making processes to distribute resources. To achieve this, public entities must hear the prioritized necessities of IDPs in settlement camps and host communities. It is recommended that public institutions cooperate with NGOs in the collection of information to ensure there is no discrimination based on gender, social or economic status.
- The government should collaborate with local authorities to document every expense made within the financial resources available for IDPs. That information should be made public and accessible.

### **Ensure security and avoid military violations:**

Bearing in mind the goal of establishing safety in the affected regions, especially in schools, it is recommended that:

- The authorities promote cooperation with the armed group and consider diplomatic ways to settle the dispute as an alternative to the failed military campaign.
- In a combine effort with all the military forces, the government should, in the impossibility of settling for peace, set up cooperation mechanisms with the armed group. In that light, it is extremely important that the effort to cooperate results in the creation of school safe zones, with immunity status. Previous positive practices should be observed, namely the Nepalese example.<sup>490</sup>
- The military presence in the region should be reviewed, to successfully resolve the divisions between forces.<sup>491</sup> The different groups of soldiers should be integrated by the government in a global and centralized plan to secure the affected regions.

Additionally, with the intent of reducing human rights violations while increasing accountability, it is recommended that:

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<sup>490</sup> 'SAFE SCHOOL ZONES' (*Safe School Nepal*) <<https://www.safeschoolnepal.org/safe-school-zones>> accessed 7 July 2022.

<sup>491</sup> Inês Cardoso, 'Cabo Delgado: "A inserção social e a formação podem travar o terrorismo"' *Deutsche Welle* (25 April 2022) <<https://www.dw.com/pt-002/cabo-delgado-a-inser%C3%A7%C3%A3o-social-e-a-forma%C3%A7%C3%A3o-podem-travar-o-terrorismo/a-61579223>> accessed 7 July 2022.

- The State should immediately eliminate any orders that restrict the IDPs' movements to safer locations. Furthermore, the government should prohibit the forced return to unsafe areas against the IDPs' will, including public workers.<sup>492</sup> In addition, the government should provide assistance to ensure the safe passage to all people fleeing.
- The State should create mechanisms to receive complaints on human rights violations conducted by the Mozambican and foreign military forces. The creation of an independent team to reach the communities directly and set up safe and child friendly mechanisms of denouncing abuses is highly recommended. Moreover, the team should ensure that the procedure is present and widely known in all settlement camps and host communities. Cooperation with organizations experienced in the investigation of violations, such as Amnesty International is suggested to increase accountability.
- Establishment of a general mechanism accessible to all military personal (regardless of the country or organization) to report human rights violations perpetrated by other military individuals. Such mechanism requires an independent institution to ensure objectivity and protect the denouncers.
- Working with the civil society and international organizations, the alleged crimes reported should be investigated and properly addressed through disciplinary and criminal procedures. Minimizing military impunity is pivotal in order to prevent further abuses.
- Military forces in direct contact with IDPs should be submitted to a training process directed for effective protection of civilians, including against perpetrations conducted by colleagues. This training should be sensitive to the challenges of the vulnerable group and focus on the prohibition of abusive force and GBV.

### **Improve the direct access and non-discrimination in education:**

Improving the access to quality education must be a primary focus of the State of Mozambique in its humanitarian intervention. Therefore, it is recommended that:

- Public authorities coordinate efforts with NGOs to ensure the existence of educative programs, in host communities and settlement camps, that facilitate IDCs' integration in the school environment. It is recommended that this informal education programs include IDCs and children living in the communities to erase the possible stigma in the school scenario.
- The ministry of education should create a program to train teachers in zones with IDCs, and a specialized team to implement it. The activities should aim at educating teachers for better understanding the challenges faced by IDCs and

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<sup>492</sup> 'Funcionários e agentes do Estado obrigados a regressar em definitivo a Mocímboa da Praia' (n 378).

improve the capacity to respond. The training should include the ability to properly tackle school stigma.

- The ministry of education should also focus on ensuring the reinforcement of the number of teachers in overcrowded schools. Considering the shortage of human resources, the local authorities should explore the possibility of informal support to schools by NGOs through provision of human resources.
- Local authorities should be in constant communication with military personal to access the risks of attack on schools. In situations of risk, temporary safe spaces for learning should be guaranteed in cooperation with organizations in the areas. Moreover, proper procedures should be previously established to permit the evacuations and safe transportation between locations.
- Measures should be taken to ensure the safety of IDCs in the way to school and back. It is recommended that classrooms are built near or within the settlement camps, to avoid long and dangerous routes. Moreover, if resources do not permit establishing a walkable distance to school, local authorities should try to provide secure transportation.
- The ministry of education is recommended to develop materials and mechanisms to allow integration for IDCs that were out of school for an extended period. Among other measures, catch-up classes are often considered, by agencies like UNICEF or UNESCO as effective.<sup>493</sup> Moreover, the existence of those classes in settlement camps and host communities, could be delegated to organizations with previous experience in integrating IDPs.
- Efforts should be made to promote temporary informal education, in the case of impossible immediate integration in the schooling system.
- The State should guarantee the access to food and clean water in the school facilities to promote attendance and reduce drop-out rates.
- The provision of school materials should be guaranteed, including school uniforms. Subsidiarily, it is recommended to promote inclusion and forbid teachers from not allowing children in the classroom due to lack of materials.
- Pursuing the efforts already made, the government should ensure civil documentation to IDCs. A special focus should go for babies born already in displacement. It is recommended that the positive practices to combat COVID-19 are reutilized in accessing all the population.<sup>494</sup>

### **Establish gender equality in access to education:**

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<sup>493</sup> ‘Access to Inclusive Quality Primary and Secondary Education for IDPs and Refugees in Crisis-Affected Areas in Iraq’ (UNESCO, 30 July 2019) <<https://en.unesco.org/fieldoffice/baghdad/education-emergency>> accessed 7 July 2022.

<sup>494</sup> Mariana Camaroti and Alyona Synenko, ‘Moçambique: um milhão de pessoas em regiões afetadas por conflitos recebem duas doses da vacina contra Covid-19’ *Comitê Internacional da Cruz Vermelha* (28 June 2022) <<https://www.icrc.org/pt/document/mocambique-um-milhao-em-regioes-afetadas-por-conflitos-recebem-duas-doses-da-vacina-covid>> accessed 7 July 2022.

Acknowledging that IDGs face deeply rooted challenges and are discriminated in their enjoyment of the right to education, it is recommended that:

- Public authorities invest in the collection and treatment of data on gender-based challenges and their impact on the right to education.
- Promotion of male participation in domestic tasks while motivating the participation of girls and women in the public life in resettlement camps and host communities. Gender-sensitive educational activities, or the creation of a social space for females in camps are suggested.
- In cooperation with NGOs and the civil society, the government creates a taskforce to combat GBV. This entity would conduct child-sensitive educative sessions for girls in settlement camps and host communities. The inclusion of counselling towards avoiding harmful treatment and psychosocial support are highly suggested. Additionally, it is recommended that the taskforce designs and conducts a mechanism of report and investigation of GBV in the context of displacement.
- Promote the dissemination of the early marriage prohibition through campaigns of sensibilization and awareness. Install reporting mechanisms for scenarios of early marriage.
- Teachers receive training in gender sensitive topics and promote the public role of women while ensuring the demystification of stereotypes and gender roles.
- Reproductive health care and family planning education should be provided in settlement camps and host communities. This measure allows the prevention or reaction to unwanted early pregnancies, especially in the case of rape or in the case of minors in which abortion might be a possibility.<sup>495</sup>
- Ensure the existence of distinct lavatories for girls that respect hygiene conditions.

### **Recommendations for the African Union**

Bearing in mind the objective to further improve the humanitarian aid to IDPs, in particular the realization of the right to education, it is recommended that:

- The AU increases the funding for the SADC's actions, in accordance with the principle of complementarity. Moreover, it is suggested that the two organizations cooperate to harmonize efforts in the military and humanitarian intervention to increase effectiveness.
- The AU improves the political pressure on the international community to guarantee financial and humanitarian support for IDPs.

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<sup>495</sup> Diploma Ministerial n.º 60/2017 de 20 de Setembro BR I SÉRIE — Número 147

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