

REQUEST FOR POSITIONING ON THE PROPOSAL TO AMEND ARTICLE 163 OF THE PENAL CODE - CRIME OF INFANTICIDE

REFORMAR – Research for Mozambique, is an organization dedicated to research, training, and advocacy in criminal justice applied to human rights in Mozambique. The organization's work is grounded in national, regional, and international legal frameworks and values partnerships with local organizations, ensuring mutual learning and growth.

As part of its advocacy activities on criminal justice applied to human rights, REFORMAR, in coordination with other civil society organizations, hereby requests the Ombudsman to provide an institutional position on the proposal amend to Article 163 of the Penal Code (PC),¹ relating to the crime of Infanticide.

This request has the formal support of several civil society organizations with recognized intervention in the promotion of human rights and justice in Mozambique, namely: **Fórum Mulher (represented by Ndzira de Deus), Observatório Cidadão para a Saúde – OCS (represented by Jorge Matine), Observatório das Mulheres (represented by Quitéria Guirengane), Centro de Integridade Pública – CIP (represented by Edson Cortez) and Lambda (represented by Roberto Paulo).**

This appeal is also joined by a group of personalities with outstanding public and academic involvement, whose career reflects a continuous commitment to the values of human dignity, social justice and gender equality: **Terezinha da Silva (Human Rights activist), Isabel Casimiro (academic and Human Rights activist), Gigliola Zacara (human rights activist), Sandra Samuel (anthropologist and human rights activist), Custodio Duma (lawyer and human rights activist), Sandra Tamele (translator and cultural rights promoter) and Ferosa Chauque (President of the Human Rights Commission of the Mozambican Bar Association).**

¹Mozambique. (2019). Law No. 24/2019, of December 24: Penal Code Revision Law. Reformat - Research for Mozambique. Available at <https://reformat.co.mz/documentos-diversos/lei-24-2019-lei-de-revisao-do-codigo-penal.pdf>

Contextualization

The crime of infanticide, traditionally understood as homicide committed by a mother against her unborn or newborn child, under the influence of the puerperal state, has been the subject of intense debate.

This proposal therefore aims to present a comprehensive view of infanticide, through a comparative analysis of international legislation and reflection on the foundations that guide the different criminal responses.

The proposal presents: a systematization of the relevant international legal framework, with a critical reading of the phenomenon of infanticide, incorporating cultural, psychological and socioeconomic factors ; the legal panorama of infanticide in Mozambique, with recent legislative developments; and, finally, an analysis of the request itself, with concrete recommendations for legal reform more aligned with the principles of social justice, human dignity and rehabilitation.

International Legal Framework

The proposal is grounded in international instruments that establish protection standards for women and children. Firstly, **the Universal Declaration of Human Rights (UDHR)** protects the right to life and human dignity, balancing child protection with consideration of the maternal context. In addition, **the Convention on the Rights of the Child (CRC)** provides for special protection measures and encourages understanding of social and psychological contexts. Furthermore, **the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** obligates States to guarantee equality and legal protection to women. Similarly, **the Bangkok Rules**, adopted by the United Nations, provide guidelines for the dignified treatment of women prisoners, emphasizing non-custodial measures. Finally, **the Maputo Protocol** recognizes reproductive rights and the need for physical and mental support before, during, and after childbirth.

Together, these instruments form the basis for a more humane and comprehensive approach to infanticide, taking into account the mother's emotional, social, and economic context.

A critical analysis of infanticide: cultural, psychological and socioeconomic factors

This proposal emphasizes that the understanding of infanticide must go beyond its criminal classification, encompassing multiple factors. From a **cultural** perspective, social norms, stigma against single mothers, and codes of honor that link family reputation to a woman's conduct can influence how the act is perceived; in certain contexts, the mother may even view it as a “protective” measure against the suffering she anticipates for the child. From a **psychological** standpoint, disorders such as postpartum depression and puerperal psychosis may impair the mother's perception of the unlawfulness of the act, which justifies the need for specialized assessment to consider possible mitigation or exclusion of criminal liability. In **socioeconomic** terms, poverty and limited access to healthcare and education increase maternal vulnerability.

The proposal argues that the law should consider all these elements to ensure a fair and proportionate response.

Infanticide in Mozambique

Historically, infanticide in Mozambique has been addressed through successive versions of the Penal Code. The 1886 Penal Code treated infanticide as a crime aggravated by the status of the individuals involved. Under the 2014 Penal Code, Article 165 established a sentence of 20 to 24 years for anyone who voluntarily killed an infant within 15 days of birth. The 2019 Penal Code, through Article 163, reduced the sentence to 1 to 5 years and introduced criteria regarding the active subject and the influence of childbirth. Despite these changes, the legal approach remains largely focused on punishment and does not mandate specialized psychological evaluation.

The proposal

REFORMAR appeals for the formal recommendation to revise Article 163 of the Penal Code. This revision should modernize and progressively guide the legal approach to the crime of infanticide, ensuring that legislation considers the multiple dimensions: psychological, cultural, social, and economic, that affect mothers during the postpartum period.

It is proposed that the law unequivocally establish the mandatory requirement of a specialized psychological and psychiatric evaluation whenever a woman is accused of infanticide, in any of its forms.

This provision would enable fairer and more sensitive judicial decisions, preventing judgments that are disconnected from the real-life circumstances of women, and promoting proportional responses aligned with human dignity and fundamental rights.

Conclusion

REFORMAR and the organizations supporting this request trust and believe that the Ombudsman will be able to take a swift and fair stance in this case to ensure the protection of human dignity and social justice. The law that defines the crime of infanticide must reflect the psychological and socioeconomic realities of the women involved in these cases, ensuring that the most vulnerable receive help rather than punishment, while also protecting children from harm.

Furthermore, it is essential that Mozambican government agencies strengthen the infanticide prevention system, ensuring that public policies are created and implemented effectively to protect pregnant women and children.

In light of the arguments presented, we urge the Ombudsman to recommend the review of Article 163 of the Penal Code, ensuring that Mozambican legislation complies with international standards for the protection of the rights of women and children.