



**IPAD**  
Instituto Português  
de Apoio ao Desenvolvimento

**AVALIAÇÃO DA COOPERAÇÃO PORTUGUESA NO  
SECTOR DA JUSTIÇA (2000-2009) AOS PAÍSES  
AFRICANOS DE LÍNGUA OFICIAL PORTUGUESA (PALOP)**

**RELATÓRIO FINAL – EXECUTIVE SUMMARY**

**(FEVEREIRO 2011)**

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centro de estudos sociais

**Equipa de Investigação:**

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João Carlos Trindade (co-coordenador)

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# AVALIAÇÃO DA COOPERAÇÃO PORTUGUESA NO SECTOR DA JUSTIÇA (2000-2009) AOS PAÍSES AFRICANOS DE LÍNGUA OFICIAL PORTUGUESA (PALOP)

## RELATÓRIO FINAL - EXECUTIVE SUMMARY

### A. PRESENTATION, OVERALL GOAL AND ASSESSMENT TEAM

**S.1.** After more than 30 years of actions of cooperation in the area of justice, although only more recently it has been integrated into a global context of public aid to development, this is the first sectoral evaluation of the Portuguese Aid to the Portuguese-speaking African Countries (PALOP - Angola, Cape Verde, Guinea-Bissau, Mozambique and S. Tome and Principe), covering the period between 2000 and 2009.

**S.2.** This was an external and independent evaluation, managed by the Portuguese Institute for Development Support (IPAD) - Office of Evaluation and Internal Audit (GAAI), and it included the constitution of an Accompaniment Group that included, besides the GAAI, representatives of the Directorate of Services of Geographic Coordination I - IPAD and the Directorate-General of Justice Policy/International Affairs Department (DGPJ/GRI).

**S.3.** The overall goal of this evaluation was to assess the contribution of Portuguese Cooperation to the reinforcement of the capacities of the national justice systems and their strengthening, to determine whether the Portuguese support contributed to greater accessibility and better access to

justice for the citizens, as well as to identify new areas of cooperation, based upon the good practices and lessons learned.

**S.4.** The external assessment team was made up of 7 investigators of various nationalities, with training backgrounds in the fields of Law, Sociology and Anthropology. The field work was carried out over the course of 2010, the trips to the various African countries visited taking place in the second half of 2010.

## **B. METHODOLOGICAL APPROACH**

**S.5.** The complexity of the subject matter under study and the proposed goals suggested resorting to strategies for gathering information based on a plurality of methods and techniques and on the triangulation of the analysis of the results (Chapters 4 and 5).

**S.6.** The cross-referencing of sources, actors and approaches to be carried out guaranteed the confrontation and synthesis of the different perspectives pertinent to the assessment of the programmes and projects for cooperation in the area of justice in the PALOP between 2000 and 2009.

**S.7.** The main agents/entities involved were analysed at the bi-lateral, multilateral and local levels, as were the main interested actors, such as ministries and legal institutions, management staff and technicians and actors at the local level. In this way, it was possible to construct an information system of a primary and secondary nature, founded on the research of documents and the analysis of data on the one hand, and on the holding of interviews and panel discussions on the other.

**S.8.** We would be remiss if we failed to point out here the fact that this is an evaluation of a very specific sector, justice, closely linked to the sovereignty of nations, related to five countries that are very different from one another (Chapter 7) in terms of their needs and in their stages of development (Angola, Cape Verde, Guinea-Bissau, Mozambique and S. Tome and Principe), and covering a period of time spanning 10 years (2000-2009).

**S.9.** It is not, therefore, an evaluation limited to assessing a PIC (Indicative Cooperation Programme), with a fixed duration and a number of identified, scheduled and more or less static projects.

**S.10.** This period includes 17 PICs, all of which refer to the strategic global axis – Good Governance, Participation and Democracy, and therefore, albeit indirectly, to the area of justice. During this period there was a succession of various institutions – today numbering 13, who are under the jurisdiction of and/or are coordinated by the present-day DGPJ/GRI – that carried out actions of cooperation in the countries included in our evaluation. In the same period, there was a significant alteration in the organisational model of the “Portuguese cooperation” itself, when the IPAD itself was created. Likewise, the bodies within the Ministry of Justice that have been the most involved in the aid to development were themselves the subject of significant organisational transformations.

**S.11.** The organisational and political transformations over a period of ten years are very obvious if we take into account that during this time Portugal was under the administration of 5 different constitutional

governments, not to mention the successive changes in the persons who assumed the institutional leadership of the bodies that were the most directly involved in the Portuguese aid to the justice sector.

**S.12.** The description of the transformations that marked the Portuguese institutional framework (Chapter 6) during the 10 years in question is enlightening in regard to the many transformations and the dynamics that, when taken into account, necessarily imply the need for a view that is capable of recognising the multifaceted and fluid nature of the Portuguese aid. But the need to transcend monolithic perspectives takes on a renewed importance when the question before us is the evaluation of Portuguese aid in 5 countries, for two species of reasons: first, due to the fact that 5 distinct countries imply distinct realities, both in the role justice plays in the organisation of each of the national societies, and in the relation of cooperation historically practiced between each partner State and Portugal in this sector; secondly, due to the fact that, just as in Portugal, during the 10 years in question, there were important changes in the policies, institutions and leadership roles in each of the partner countries.

**S.13.** For this period of 10 years, then, we have a dynamic reality that involves 6 different States and which therefore admits of a careful analysis that in no way conforms to a static and monolithic characterisation of the Portuguese Aid in the Justice sector to the Portuguese-speaking African Countries.

### C. COOPERATION IN THE AREA OF JUSTICE AND HETEROGENEITY OF THE STATES

**S.14.** The execution of any policy of cooperation in the area of Justice that intends to assert the idea of the Rule of Law in a democratic society therefore demands of the States an effective commitment to the implementation of the democratic principles and the attainment of the Millennium Development Goals (MDG). If, on the one hand, the implementation of Rule of Law, based on the State of Justice, should appear as a reference point in the cooperation in accordance with the MDG, on the other hand, it is important that the aid to development, in the justice sector and others, be able to find its basis on an informed dialogue between the principles that are being promoted and the specific conditions on the ground that mark the realities of the partner countries in the cooperation.

**S.15.** The added attention that some donors are giving to access to justice, to respect for human rights, and to the accountability of the institutions to the public – instead of the attention to the role of the justice sector in the promotion of economic growth – coincided with a change of direction in the global thinking of the donors in relation to aid. With the Millennium Development Goals promoted by the United Nations (UN), the reduction of poverty became the official goal in development policy.

**S.16.** Likewise, the plurality of legal orders found in society is more complex today than ever. Up until now, the subject of legal pluralism has been centred on the identification of the local infrastate legal orders that coexist in different forms with the official national law. Today, along with the local and national legal orders, supranational “legal” orders are appearing that interfere in many ways with the former orders. This is not about conventional public international law, but rather legal imperatives



conceived by hegemonic States, multilateral financial agencies or powerful transnational actors (multinational companies), above all in the economic area, and that are globally imposed, mainly on countries located on the periphery of the world system, or partially so. Hence, sub-national legal pluralism is joined today with supranational legal pluralism.

**S.17.** The question of the plurality of legal orders is important per se to the extent that it marks the coexistence of legalities that are so often disregarded. It is also important because it fosters a richer perspective of the justice sector that ceases to restrict law to the official law of the national spacetime to recognise other instances of law that result from local and global spacetime. In this sense, the justice system in a given society is always the result of a strong relationship between its social and political history, the traditions and customary instances of law that pervade the social body, the way the State relates to other legalities, their conditions of regional and global integration and the forms of legality that result therefrom.

**S.18.** When considering the crossing of these dimensions, which confers a uniqueness to the legalities of each national context, the question of plurality of legal orders appears, also, as an illustration of the vigorous diversity of the realities in play.

**S.19.** We are also dealing with the Heterogeneity of the States, a dimension that, when recognised, is reflected in two ways that are significant to this evaluation. First, in highlighting the differences between Portugal and the partner countries in question. Second, in the recognition of the important differences between what have been conventionally called the Portuguese-speaking African Countries.

S.20. In this sense, the added value of this evaluation cannot be separated from an effort to achieve a translation that would allow a mutually intelligible communication: between the different spaces of the world system, between different institutions and forms of government, between different social and cultural realities, between different legalities, between different concepts of justice, and finally, between the practices of cooperation and the texts that reflect on them.

## D. MAIN LESSONS AND RECOMMENDATIONS

There were 4 major lessons and 31 recommendations that resulted from the evaluation carried out:

**L1 - Lesson 1: The value of justice should be enhanced by the Portuguese cooperation by giving it a central sector in its operation and consolidation of the Rule of Law and in the strengthening high intensity democracies.**

**R1 - Recommendation 1:** *Justice should be seen as a system and not as a simple set of institutions, which requires the reinforcement of the bonds and the improvement in the coordination between various actors, including the civil society.*

**R2 - Recommendation 2:** *Priority should be given to the needs of the more vulnerable and marginalised groups, increasing their access to law and justice, dealing with situations of discrimination, poverty, vulnerability and marginalisation, especially in the case of women's rights.*

**R3 - Recommendation 3:** *Cooperation in the justice sector should be understood as being an instrument of social transformation through the enablement of the vulnerable sectors of the society.*

**R4 - Recommendation 4:** *It is important to identify who the real beneficiaries of the projects of cooperation in the justice sector are.*

**R5 - Recommendation 5:** *Portugal should give priority to strategic areas in which, in a consistent manner, it can consolidate skills and assets capable of benefiting the justice system of the partner countries.*

**R6 - Recommendation 6:** *Support should be given to projects that lead to the revision of anti-corruption legislation in the partner countries, seeking to harmonise it with the international anti-corruption laws ratified by those countries.*

**R7 - Recommendation 7:** *In actions initiated under multilateral processes, Portugal should have an active role that takes advantage of its field knowledge of the*

PALOP. Likewise, the bilateral action should be carried out in concert, so as to avoid redundancies with international organisations.

**R8 - Recommendation 8:** *Transversal themes such as HIV/Aids and the like should be incorporated in the intervention in the justice sector.*

**R9 - Recommendation 9:** *Greater efforts should be made so that the aid to development is increasingly effective and locally appropriate, providing a better understanding of the African realities.*

**L2 - Lesson 2: The definition of a genuine strategy of cooperation in the justice sector implies a more responsive and coherent institutional dynamic.**

**R10 - Recommendation 10:** *Cooperation in the justice sector should correspond to a strategic vision of the Portuguese aid to development.*

**R11 - Recommendation 11:** *Assuming a strategic perspective, the role of IPAD should be reinforced as a priority action, allowing it to make a constant evaluation of the policies of Portugal in each country, in terms of the promotion of justice, democracy and good governance.*

**R12 - Recommendation 12:** *IPAD should be endowed with staff trained in the area of justice.*

**R13 - Recommendation 13:** *IPAD should encourage the involvement of ONGs (national and those of the partner countries) through a better dissemination of the available supports among the civil society.*

**R14 - Recommendation 14:** *The strategy defined by IPAD for the justice sector should be for a period of 5 years in order to avoid contingencies that often result from changes in the persons occupying the most crucial positions.*

**R15 - Recommendation 15:** *Articulation with the embassies of the Portuguese-speaking African Countries (PALOP) should be a matter of rule, in order to capitalise on the means and the field knowledge of these jurisdictions.*

**R16 - Recommendation 16:** *IPAD should develop the figure of “programme official” for the priority sectors of cooperation for each country.*

**L3 - Lesson 3: The appropriation by the partner countries of the projects and reforms is one of the main keys to development in the justice sector.**

**R17 - Recommendation 17:** *There should be an improvement in the knowledge the key actors in the design and execution of the projects have about the specific aspects of the cultural, political and legal reality of the countries that benefit from the aid to development.*

**R18 - Recommendation 18:** *The definition of the strategic plan and the definition of the areas of emphasis for cooperation in the justice sector by Portugal should be based on the needs identified as priority areas by the various partner countries.*

**R19 - Recommendation 19:** *The national appropriation should include aid to the governmental reforms underway that directly or indirectly involve the justice sector, supporting the national actors in the clarification of their goals in that sector.*

**R20 - Recommendation 20:** *The construction of complementary actions on behalf of the beneficiary country not only means that Portugal would be present at forums where the donor countries come together, but that it would also have an active role in the creation of these spaces for concertation.*

**R21 - Recommendation 21:** *An effort should be made to come together with the organisations of the civil society in order to create synergies and define strategies that better respond to the dynamics in the field.*

**R22 - Recommendation 22:** *As training is repeatedly referred to by the partners as an area of excellence for Portuguese cooperation, an investment should be made, dedicated to this dimension as being important capital from the Portuguese cooperation.*

**R23 - Recommendation 23:** *Support the training of trainers in the justice sector, thereby making it possible to profit from the common legal matrix that unites these countries, while at the same time allowing for an improvement in the efficacy and sustainability of aid to the justice sector.*

**R24 - Recommendation 24:** *Cooperation should not be restricted to the formal law of the State, recognising the central importance that the other laws (including the so-called traditional law) have in some of the PALOP, where they have jurisdiction for the resolution of conflicts.*

**R25 - Recommendation 25:** *The programmes to be developed in the future, in the area of justice, should pay attention to the vulnerable groups in each country, promoting measures that allow them to have access to law and justice.*

**R26 - Recommendation 26:** *The establishment of an Observatory of Justice for the PALOP should be taken into account.*

**R27 - Recommendation 27:** *The dispersion of resources should be avoided, not only because of the weak sustainability that this dispersion implies, but also due to the importance of Portugal's image being associated with concrete actions that its partners value and appropriate.*

#### **L4 - Lesson 4: Definition of another policy of cooperation for justice.**

**R28 - Recommendation 28:** *A concerted plan should be made for evaluations in order to bring together resources in the evaluation period (for example, between the evaluation of the PIC and sectoral evaluations).*

**R29 - Recommendation 29:** *The evaluations (intermediate and final) should examine not only the quantitative elements of the execution, but also assess qualitatively the impact and sustainability of the policies, the opinion of various actors in the field being heard for this purpose.*

**R30 - Recommendation 30:** *A more active dialogue should be started with other international donors in order to learn lessons they have gained and to learn possible good practices that may be useful in the Portuguese cooperation.*

**R31 - Recommendation 31:** *IPAD should develop a work that enhances the value of the historical experience of Portuguese cooperation, identifying blockages and less functional means of action and gathering examples of good practices from the core of the Portuguese cooperation.*